

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1904.

No. 1467.

No. 16, SPECIAL CALENDAR.

KATHERINE M. CORCORAN, APPELLANT,

vs.

JOHN W. RENEHAN, GUARDIAN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

KATHERINE M. CORCORAN, Appellant,	} No. 1467.
vs.	
JOHN W. RENEHAN, Guardian.	

1 In the Supreme Court of the District of Columbia, Holding
a Probate Court.

In re Estate of RICHARD J. CORCORAN. # 2259. Guardianship.

Be it remembered that in the supreme court of the District of Columbia at the city of Washington in said District at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Pursuant to the petition duly filed on September 2, 1897, Katherine M. Corcoran, as nearest of kin to Marie J. and Loretta T. Corcoran, was on the 3rd day of said month appointed guardian of their estate and on the 14th day of the same month executed a bond in the sum of \$10,000. The first account of the guardian was approved and passed on November 11, 1898 showing a balance in her hands of \$4877.29 cash and \$36.29 in chattels. In this account she claimed and was allowed ten per cent. commission on the income, leaving \$4655.06 principal upon which she did not take commission.

July 3rd, 1902, Marie J. and Loretta T. Corcoran filed a petition for a rule against the guardian to show cause why she should not account and for the appointment of a new guardian in her stead. Upon the coming in of her answer on July 10th, the court on the

2 same day ordered that she render an account on or before
August 10, 1902 and appointed John W. Renahan guardian in her place and stead and directing the former guardian to deliver all property to the wards. On the following day the new guardian qualified.

Thereafter the account of Katherine M. Corcoran was referred to the register of wills as special auditor, for the purpose of being stated. There was submitted to him by her a statement of her account accompanied by such vouchers as she was able to procure for the purpose of being stated. This statement was rearranged and reduced to typewriting by said auditor: that so much of said statement as relates to items claimed for which no vouchers were produced, is as follows:

Debit.

Nett rent receipts after the deduction of 5% commission, repairs, etc.

Rents received from Heenan:

1898.		Gross. Repairs, &c. Nett.	
Sept.	3.	\$60.35	\$57.33
Capitol Hill:			
Oct.	2.	60.35	57.33
Nov.	3.	60.35	57.33
Dec.	3.		
	15 & L.	\$40.00	
	2616-P.	18.35	
		<hr/>	
	W. C. Fleet, repairs.	58.35	53.64
			\$1.80
1899.			
Jan.	5.	58.35	55.44
Feb.		58.35	55.44
M'ch		58.35	55.44
Ap'l	7.	58.35	55.44
May			
		40.00	
		20.35	
	1607-33d.	15.00	
		<hr/>	
		75.35	62.59
	Steel, painting.		7.00
	Insurance 1607-33d.		2.00
June	16.	67.85	57.96
	Collins, repairs.		6.50
July	6.	60.35	50.14
	Fleet, repairs		7.20
"	15.	41.50	39.45
Aug.	10.	75.35	46.59
	Water rents.		21.00
	Revenue stamp.		.25
	Collins, repairs.		.70
	Henderson, repairs.		1.25
	Collins,		1.80
Sept.	7.	75.35	71.59
Oct.	2.	75.35	71.09
	Collins, repairs.		.50
Nov.	6.	73.35	69.69
Dec.	5.	73.35	68.94
	Collins, repairs.		.75
Amount carried forward.			\$985.43
4			
1900.		Brought forward.	
Jan.	9.	73.35	60.46
	O'Connor, repairs.		9.23
Feb.	6.	73.35	69.69
M'ch	5.	73.35	69.70
Ap'l	5.	75.35	67.10
	Poore, repairs.		1.50
	Collins,		3.50
May	15.	75.35	66.34
	Fleet, repairs.		2.50
	Insurance.		2.00
	Harrison, repairs.		1.35
June	7.	75.35	62.60
	Poore, repairs.		9.50
July	7.	75.35	71.60

Aug. 15.	.....	\$60.35	.....	\$36.35
Sept. 10.	Water rent (where rent 2616 -P this month).....	75.35	\$21.00	70.85
	Revenue agreement stamp .....		.25	
	Hannon, repairs.....		.50	
Oct. 10.	.....	75.35	.....	64.40
	Collins, repairs.....		3.25	
	" "		2.95	
	O'Connor, repairs		1.00	
Nov. 7.	.....	73.35	.....	69.70
Dec. 12.	.....	73.35	.....	69.70
1901.				
Jan. 9.	.....	73.35	.....	69.45
	Butler, repairs.....		.25	
Feb. 11.	.....	73.35	.....	53.35
	Insurance Mutual.....		16.35	
M'ch 18.	.....	75.35	.....	69.50
	Furniture Ins.....		2.10	
Ap'l 16.	.....	75.35	.....	66.60
	O'Connor, repairs.....		5.00	
May 17.	.....	75.35	.....	50.70
	Wheeler, repairs.....		7.50	
	Harrington, "		11.40	
	Insurance.....		2.00	
June 11.	.....	75.35	.....	68.60
	Harrison, repairs.		3.00	
5	Amount carried forward.....			\$2,142.12
1901.	Brought forward.			2,142.12
July 9.	.....	75.35	.....	71.60
Aug. 12.	.....	75.35	.....	51.43
			2.00	
	Water rent		18.17	
Sept. 19.	.....	75.35	.....	71.60
Oct. 14.	.....	75.35	.....	70.35
	Henderson, repairs.....		1.25	
Nov. 12.	.....	58.35	.....	54.45
	O'Connor, repairs.....		1.00	
1902.				
Jan. 21.	2 months' rent.....	146.70	.....	36.03
	Davis, taxes.....		7.88	
	" "		74.74	
	Stove shaker.....		.25	
	O'Connor, repairs....		4.50	
	Minor, painting		3.75	
	Reynolds, repairs.....		2.25	
	O'Connor, repairs.....		.75	
	Insurance, Mutual		9.25	
Feb. 13.	.....	73.35	.....	69.70
M'ch 18.	.....	75.35	.....	69.50
	Insurance, furniture.....		2.10	
Ap'l 16.	.....	75.35	.....	68.10
	Reynolds.....		3.50	
May 28.				
June 19.	2 months.....	149.70	.....	56.14
	Knowles.....		1.00	
	Fleet.....		.50	
	Ins		2.00	
	Taxes.....		82.61	
July 25.	.....	74.35	.....	47.73
	Water rent.....		22.92	
	Amount carried forward.....			\$2,808.75

Credits Claimed.

Items for which vouchers found :

1898.			
May	15.	Sodding grave	\$2.00
Oct.	3.	Freight to Leonardtown.....	.75
"	24.	Lansburgh & Bro	6.32
Nov.	1.	Lansburgh	11.73
"	11.	J. J. Dolan, att'y.....	20.00
"	30.	Taxes	73.24
Dec.	9.	St. Mary's academy.....	165.50
"	16.	May E. Brown.....	3.58
"	26.	Insurance policies	11.65
1899.			
Ap'l	3.	Heenan—deposit on purchase house 1607-33d St.....	100.00
"	25.	Lansburgh & Bro.....	9.28
"	29.	Balance purchase—1607-33d St.....	1,900.00
"	"	J. J. Dolan, expenses in connection with purchase of house..	70.00
May	4.	St. Mary's academy.....	176.89
"	10.	J. J. Dolan, att'y	20.00
"	17.	William Jordon, painting.....	4.00
"	31.	Taxes.	73.24
July	21.	Woodward & Lothrop.....	2.50
Aug.	8.	Register of wills, costs	3.69
Nov.	29.	Taxes.....	7.88
"	29.	"	74.74
Dec.	25.	Insurance—policies	10.63
1900.			
June	9.	Rich—shoes ...	2.50
"	11.	Taxes.....	7.95
"	11.	"	75.49
July		Mrs. Russell dressmaker	2.50
Sept.	1.	Dr. Schooley	6.00
"		St. Mary's academy	334.82
Amount carried forward			\$3,176.88
7		Brought forward.....	3,176.88
		Kann & Sons, D. G....	4.55
		" " "	2.00
		Bon Marche, rib.....	.53
1901.			
M'ch	22.	Sodding lot.....	8.00
Ap'l	5.	Paper, Palais Royal.....	.25
"	13.	Comb " " .....	.59
"		Bon Marche, hose .....	.75
"	15.	Palais Royal, elastic .....	.50
"	16.	Freight to Leonardtown.....	.25
May	2.	St. Mary's academy.....	353.46
"	22.	Lansburgh & Bro. vests.....	.25
"	"	" " " 2 fans & 2 chairs.....	1.86
"	"	" " " hose.....	.25
"	"	" " " buttons .....	.50
		Kann & Co., linings.....	.38
"	"	" " " " .....	.38
May	31.	Taxes	15.75
"	"	"	149.48
June	12.	Heilbrun, shoes	3.50
July	5.	Mayer Bros., ribbon .....	.48
"	"	" " suit.....	1.44
"	12.	Heilbrun, slippers... ..	2.75
		Kann & Co.....	7.34
		Heilbrun, bathing shoes	1.48
"	24.	Palais Royal, lawn.....	.60
		Kann, ribbon .....	.38

	Kann, ribbon	\$0.08
	" hat and gloves .....	.65
	" embroidery .....	.14
	" Amount carried forward	\$3,735.45
8	Brought forward.	3,735.45
1902.		
April	Freight .....	.25
	Lansburgh, lawn	2.10
	" vest .....	.25
	" " .....	.25
	" pattern .....	.20
	Palais Royal, handkerchiefs ..	.50
	Bon Marche—fan .....	.75
July 1.	Mayer Bros.	1.00
	Lansburgh—skirt .....	.79
	" embroidery	1.56
	" ribbon .....	.45
Aug. 4.	Prudential—insurance on lives of wards—53 weeks (policies).	10.60
	Total	\$3,754.15

9

Cr.

Payments for which no vouchers:

1898			
Sept.	Dentistry—Marie	1	\$2.00
"	" Loretta	2	6.00
"	Dr. Mallon	3	6.00
"	Medicine	4	3.50
"	1 Canton flannelette	5	2.00
6* "	22. Donahue, agent for repairs	6	11.55
Oct. 1.	Box sent Loretta birthday	7	8.25
"	Shoes & stockings	8	5.00
"	Freight on box.	9	.30
"	Incidentals	10	1.00
Nov.	Leggings M. & L.	11	1.50
"	Miss Mary Dowling	12	3.00
"	Birthday box for Loretta	13	4.70
Dec.	R. M. Corcoran—board and washing for wards	14	10.00
"	Shoes	15	1.50
"	Stamps & cash.	16	1.20
"	Box for wards	17	4.00
"	Cash—Loretta & Marie	18	2.00
"	Handkerchiefs	19	1.75
20* "	Boat fare	20	5.00
"	Dry goods, towels, handkerchiefs, stockings, shoes &c.	21	10.00
1899.			
22* Jan.	Dresses—Lansburgh & Bro.	22	7.00
"	Seamstress	23	4.00
24* "	Car fare etc.	24	3.00
25* "	Christmas tree, incidentals, toys etc.	25	18.50
Feb.	Shoes, repairs	26	4.50
27* April	Car fare	27	2.00
"	Napkins	28	1.25
	Amount carried forward		\$130.50
10	Brought forward		130.50
1899.			
April	Ring—present for Loretta to Marie	29	1.00
" 1.	Easter boxes	30	5.00
" "	Freight and express	31	.50

[* In red ink in copy.]

32*	April 12.	Birthday box Marie—express & freight.....	32	\$7.25
33*	May	Edgar Thornton, roofing, spouting 1607-33d.....	33	30.00
34*	"	John King, painting & whitewashing 1607-33d.....	34	7.00
	"	Edward Ashby, carpenter.....	35	10.00
	"	Shoes for commencement 2 pr.....	36	5.00
	"	Stockings, ribbons etc.....	37	3.00
38*	"	Dresses (commencement) goods and making.....	38	15.00
39*	"	Boat fare.....	39	8.00
	"	Dr. Mallon.....	40	8.00
	"	Medicine.....	41	4.75
42*	July	Black sailor hats.....	42	3.25
	"	4. Pleasure trips, nearby resorts.....	43	8.25
44*	Aug.	Lansburg- & Bro., dry goods.....	44	4.75
	"	15. Pleasure trip—Harpers Ferry.....	45	12.25
	"	Health waist—4 @ .50.....	46	2.00
	"	Lansburgh & Bro., dry goods.....	47	9.65
48*	"	Pleasure trip to Mt. Vernon, carfare, lunch etc.....	48	7.25
49*	Sept. 1.	Boat fare—guardian in charge.....	49	10.00
	"	10. Lansburgh & Bro. dry goods.....	50	10.00
	"	Pal-is Royal—hose etc.....	51	3.00
	"	Freight & express.....	52	.50
	"	Shoes for M. & L.....	53	5.00
	"	Dress making, altering & repairing...	54	12.30
55*	"	Incidentals.....	55	3.00
Amounts carried forward.....				\$326.20
11	Brought forward.....			326.20
1899.				
	Sept.	Board & washington—June to Sept. to guardian.....	56	80.00
	Oct. 4.	Birthday box to wards freight & express.....	57	4.75
58*	"	4. Gloves and ribbons.....	58	2.00
	"	4. Business trip of guardian to Leonardtown.....	59	11.50
	Nov. 1.	Coats & hats for M. & L. winter season.....	60	8.00
	"	2 prayer books for confirmation.....	61	2.75
	"	29. Tranksgiving box to wards.....	62	5.00
	"	29. Freight & express.....	63	.50
	"	Incidentals \$10 see book p. 78 last line*		
	"	Altering & repairing hat M. & L.....	64	5.50
	Dec.	Cash for Christmas M. & L.....	65	5.00
	"	1. Dresses.....	66	8.00
	"	" Ribbon & trimmings.....	67	3.13
	"	K. M. Corcoran board & washing for wards.....	68	10.00
1900.				
	Jan.	Shoes.....	69	5.00
		69* Dr. Mallon for Marie.....	70	6.00
		Medicine for Marie.....	71	3.25
		71* Dr. Hammett, dentist, Marie.....	72	5.00
		72* " " " Loretta.....	73	4.00
		Fare via Baltimore to Leonardtown.....	74	6.00
		Satchel.....	75	1.50
		Brown veiling.....	76	.50
		Black mits.....	77	.50
		Toilet articles.....	78	3.50
		78* Carfare.....	79	2.00
	M'ch 1.	Underware M. & L.....	80	3.00
	"	Health waist M. & L.....	81	2.00
	April 6.	Easter & birthday boxes M. & L. (F. & E.).....	82	7.30
Amount carried forward.....				\$521.88
12	Brought forward.....			521.88
	June	82* Commencement ribbons, fans, hose & handkerchiefs.....	83	7.50

[* In red ink in copy.]

June	83*	Wards returning from Leonardtown in charge of guardian via boat.....	84	\$8.00
"		Expressage on trunk.....	85	.50
"		Gossamers & umbrellas.....	86	7.00
"		Straw hats for wards.....	87	2.25
"		White duck dress for Marie.....	88	2.45
"		Guimps.....	89	1.25
"		White dress Loretta.....	90	1.49
"		2 blue calico dresses M. & L.....	91	3.38
"		Trimmings for dresses.....	92	.90
"	92*	Carfare.....	93	2.00
"		Hosiery.....	94	.50
July		Dress goods, trimmings etc.....	95	3.44
"	95*	Pleasure trips, nearby resorts.....	96	5.00
"	96*	Dr. Mallon M. & L.....	97	8.00
"		Medicine M. & L.....	98	4.50
"	97*	Incidentals.....	99	2.00
Aug.		Photographs.....	100	6.00
"	99*	Trip to Norfolk by advice of doctor for Marie & Loretta—guardian in charge.....	101	25.00
"		Gingham dresses & guimps.....	102	4.00
"		J. M. Burns, attending to cemetery lot.....	103	2.00
"		Shoes & hose.....	104	5.50
"		2 vests.....	105	.50
"		Ribbon M. & L.....	106	.50
"		Wash rags.....	107	.10
"		Toothbrushes.....	108	.50
"	107*	Towels.....	109	.50

Amount carried forward..... \$626.64

13		Brought forward.....		626.64
1900		Tooth powder.....	110	.25
Aug.		Underclothing, skirts etc.....	111	5.00
"	108*	Carfare.....	112	2.00
"		Sunbonnets.....	113	1.00
"		Handkerchiefs.....	114	1.50
"		Altering & repairing clothing.....	115	5.50
"		6 pairs hosiery for winter.....	116	3.00
"		Overshoes 2 pairs.....	117	1.00
Sept.	114*	Boat fare to Leonardtown guardian in charge..	118	10.00
"		K. M. Corcoran, board and washing June 10, to Sept.	119	80.00
"		Carfare and expressage on trunk.....	120	1.75
"		Stationery & stamps.....	121	.50
Oct.		Box to wards Loretto's birthday.....	122	5.50
"		Shoes and hosiery sent to wards.....	123	5.75
"		Hair ribbons & combs.....	124	.75
"		Collars.....	125	.50
"		Ties.....	126	.50
"		2 belts.....	127	.50
"		Stick pin.....	128	.50
"		Hat pin.....	129	.50
"		Hairpins.....	130	.25
"	127*	Carfare and incidentals.....	131	2.00
Nov.		2 writing desks.....	132	3.00
Dec.		Shoes.....	133	5.00
"		Hose.....	134	1.00
"	128*	Furs for wards 2 sets.....	135	9.96
"		Freight on box.....	136	.50
"		Carfare.....	137	1.50
"	21.	Penknife for Marie.....	138	.50
"	"	Manicure set.....	139	1.50

\$777.85

14		Brought forward.....		\$777.85
	1900			
	Dec.	133* ½ doz. handkerchiefs.....	140	1.50
	"	½ doz. napkins	141	2.00
	"	2 napkin rings M. & L.....	142	1.00
	"	½ doz. towels	143	.75
	"	2 combs.....	144	1.00
	"	2 brushes.....	145	1.00
	"	Cash to wards for Christmas	146	3.50
	"	Postage stamps	147	.24
	"	Writing paper.....	148	.25
	"	142* Dr. Crosson.....	149	10.00
	"	Medicine.....	150	3.25
	"	K. M. Corcoran, board & washing	151	10.00
	"	Stamping ink.....	152	.25
	1901			
	Jan.	146* Wards returning to school in Baltimore—guardian in charge.....	153	13.50
	"	Toilet articles.	154	1.50
	"	Freight on trunk & expressage.....	155	.75
	"	Elastic.....	156	.40
	"	Cash to wards returning to Leonardtown.	157	2.00
	"	Sheet music.....	158	.50
	"	Music case.....	159	.75
	April	Birthday box Marie.	160	8.25
	"	154* Business trip—guardian to Leonardtown	161	12.50
	May	Commencement dress goods Marie.....	162	4.70
	"	3 yds. sash ribbon	163	1.20
	"	Shoes & hosiery.....	164	5.50
	"	158* Carfare & incidentals.....	165	3.25
	"	Express on box sent to wards for commencement....	166	.75
		Amount carried forward.....		\$868.14
15		Brought forward....		868.14
	1901.			
	June	Summer hats Bon Marche.....	167	8.00
	"	161* Wards returning to Washington, guardian in charge.....	168	7.25
	July	20* Altering & repairing dresses M & L.....	169	7.55
	"	163* Carfare & incidentals.....	170	2.50
	"	Dr. Crosson.....	171	10.00
	"	Medicine.....	172	3.50
	"	166* E. Voight, jeweler.....	173	4.50
	"	Stamps & stationery	174	.75
	Aug.	168* Pleasure trips for wards, Atlantic City guardian in charge, advice of doctor.	175	90.00
	"	24. Shoes M. & L.....	176	5.50
	"	Ribbons.....	177	.75
	"	Hosiery.....	178	2.00
	"	Health waists.....	179	1.00
	"	Underware.....	180	5.25
	"	174* Pleasure trips, nearby resorts....	181	5.25
	Sept.	175* Wards returning to school, guardian in charge.	182	8.75
	"	176* Carfare.....	183	1.50
	"	Cash to wards.	184	2.00
	"	177* K. M. Corcoran, board & washing June to Sept.	185	80.00
	Oct.	Birthday box to wards, freight & express	186	9.25
	"	Reefer jackets—navy blue M. & L.....	187	5.25
	Nov.	2 dresses.....	188	6.60
	"	Lining	189	1.05
	"	Spool silk	190	.30
	"	Hooks & eyes.....	191	.10

[* In red ink in copy.]

Nov.	2 dress patterns.....	192	\$0.50
"	Black dress.....	193	2.00
	Amount carried forward.....		\$1,139.24
16	Brought forward.....		1,139.24
1901.			
Nov.	186* Trimmings etc.....	194	1.40
"	Ribbons.....	195	.40
"	Freight & express on box.....	196	.75
"	189* Carfare & incidentals.....	197	3.25
Dec. 21.	Shoes M. & L.....	198	5.50
" 21.	Hosiery 2 pr.....	199	1.00
"	Ribbons M. & L.....	200	.90
"	Handkerchiefs.....	201	.75
"	2 flannel shirts.....	202	1.18
"	Carfare.....	203	1.00
"	Cash to wards Christmas.....	204	5.00
"	E. Voight, silver thimble.....	205	.75
1902.			
Jan.	Overshoes 2 pr.....	206	1.00
	Umbrellas.....	207	2.50
	Stamps.....	208	.24
	Stationery.....	209	.25
	Back comb.....	210	.50
	Fare for wards returning to Leonardtown.....	211	5.00
	K. M. Corcoran board and washing.....	212	10.00
	Toilet articles—tooth powder, brushes & combs, hair brushes & towels.....	213	3.20
April	Birthday box to Marie.....	214	7.60
May	Shoes M. & L.....	215	5.25
"	Sash ribbon.....	216	.68
"	Carfare & incidentals.....	217	3.25
"	Freight & expressage on box.....	218	.75
June	E. Voight, repairing medal.....	219	.75
"	Mayer Bros. hats for wards.....	220	3.25
	Amount carried forward.....		\$1,205.34
17	Brought forward.....		1,205.34
1902.			
June	K. M. Corcoran board and washing June 18 to July 3 for wards.....	221	20.00
"	214* Pleasure trips nearby resorts.....	222	3.75
"	215* Carfare.....	223	1.00
July	Hats & trimmings.....	224	5.40
	Total.....		\$1,235.49
18	<i>Recapitulation.</i>		
	Balance 1st account.....		\$4,913.54
	Debits.....		2,808.75
			7,722.29
	Credits vouchers for.....	\$3,754.15	
	" claimed without vouchers.....	1,235.49	
			4,989.64
	Balance.....		\$2,732.65

[* In red ink in copy.]

19 At the hearing before the special auditor the following testimony, among others, was given :

CATHERINE M. CORCORAN, the former guardian, having been first duly sworn, testified as follows :

By Mr. DOWNING :

Q. (Exhibiting digest of guardian's account made to register preliminary to hearing under reference.) Did you make this statement? A. Yes, sir.

Q. State whether or not it is a correct statement of the expenditures you have made in connection with your guardianship of Marie and Loretto Corcoran? A. Yes, sir.

Q. You have some items here for which you have rendered vouchers, and some for which you have rendered no vouchers. Explain about those. A. I just remembered those. I did not have any receipts for them, or anything of that kind.

Q. Those are expenditures which you have made in connection with your guardianship? A. Yes, sir.

Q. You say you did not take any receipts for them? A. No; no receipt. Some were cash sales that I did not get receipts for.

Cross examination.

By Mr. LAMBERT :

Q. Which bank was that? (Referring to bank in which guardian kept her guardianship account.) A. The Farmer's and Mechanics' bank, and Mr. Dolan advised me to take it from there and put it in the National Safe Deposit bank.

20 By Mr. DOWNING :

Q. In which national bank? A. The National Safe Deposit bank.

By Mr. LAMBERT :

Q. And you put the account in there; did you? A. Yes, sir.

Q. How long did you keep it there? A. I could not tell you that.

Q. Have you a bank account there now? A. No, sir.

Q. Did you close it up? A. No, sir.

Q. Have you a bank account in Georgetown? A. I did have one there.

Q. Did you take your checks out; have your bank book balanced? A. Yes, sir.

Q. What did you do with the checks? A. Burned them.

Q. Have you the bank book? A. I could not tell you that; I might have.

Q. The money which you put in the National Safe Deposit bank, did you have a book for that? A. I did have a book; yes, sir.

Q. Did you have vouchers—checks? A. I did have those.

Q. What did you do with those? A. I do not know; I suppose they are around the house somewhere.

Q. You did not keep them? A. No, sir.

Q. You do not know how much money you had? A. No, sir.

Q. You do not know how much money you had in either bank?

A. No, sir; I do not remember that.

21 Q. You do not know how much you started with? A. I cannot remember that.

Q. You cannot remember it in regard to either bank? A. No.

Q. Did you keep any books at all? A. What kind?

Q. Books of account. A. For what I got receipts—things like that—sales.

Q. Did you keep books or receipts? A. Just receipts.

Q. How much money? Did you receive any cash when you were appointed guardian? A. That would be in the bank. I could not tell you.

Q. Do you mean that you put in the bank all the money which you received? A. He paid me so much at a time. I did not receive all at once.

Q. And as you received it, you put it in the Farmers' and Mechanics' bank? A. Yes, sir—the first bank.

Q. And after that you put it in the National Safe Deposit bank? A. Not until a year after that. *Then I bought that house. Then Mr. Dolan advised me to take it out of there and put it in this other bank. I could not tell you the time.*

Q. After you took it out of the first bank and put it in the National Safe Deposit bank, did you put all the money in the bank? A. Some times.

Q. You did not put it all in? A. Put it in as I got it.

Q. All the bills which you paid and for which you put in vouchers, were they paid in check or money? A. In money.

22 Q. You did not pay any bills by check? A. No bills by check.

Q. When you were appointed guardian, did you receive some life insurance money? A. Not then; I guess some four or five months afterward.

Q. How much did you get? A. \$1,900, I think—something like that.

Q. \$1900? A. Something like that. I think that was it.

Q. Did you find in the building association about \$2,500? A. No; no building association money at all.

Q. No building association money? A. No; I do not remember that.

Q. Did you or not find it in the bank? A. No money in the bank.

Q. How much did you receive besides the \$1900 that you spoke of? A. There was no building association money. I do not remember that.

Q. What money besides the \$1900 did you receive? A. What Mr. Heeman sold—the things in the store, and things like that.

Q. In your petition you stated that there is money in bank and in the building association to the amount of \$2500? A. I do not remember anything about a building association.

Q. You never received any money from the building association? A. I do not remember anything about a building association. I do not remember that at all.

23 Q. You spoke of stock in the store and household furniture? A. Yes.

Q. Worth about \$700. What is that? A. That is the furniture that Mr. Heenan sold. I know they hunted up a bill for the association; but I do not remember anything about it.

Q. What do you mean by saying in your petition that there was something in the building association? A. What petition?

Q. The petition which you filed on September 2, 1897, asking that the court appoint you guardian? A. I do not remember that.

Q. You asked to be appointed guardian? A. I did not ask it for myself; I did not want to be appointed.

Q. You did file a petition asking that a guardian be appointed? A. Mr. Dolan filed it.

Q. And in that petition you say that you pray the court that the court will appoint you guardian? A. Yes; because they wanted me to be appointed, *being the nearest to the children. I did not want to be appointed.*

Q. How did you keep your receipts for money that you paid out for the children? A. How did I keep them?

Q. Yes? A. Do you mean what I have done with them?

Q. Yes? A. The ones that I have no vouchers for?

Q. No; the ones you have vouchers for. How did you keep them? A. I got receipts for them.

Q. Have you those receipts filed away? A. All along like
24 that—money that I had to get receipts for that I could not get.

Q. When? A. After this thing came up. And there are a good many receipts that Mr. Dolan has that I have not had at all.

Q. Did you enter those receipts in books to show what you spent? A. No; just kept them together.

Q. You did not keep anything to show what money you were spending? A. No.

Q. How did you get the money in bank? Did you keep it separate, or to your order? A. Sometimes in checks; and when I wanted money, I would draw it out and pay it to the children.

Q. Was the check written in the name of guardian or your own name? A. In the name of guardian.

Q. You have no bank account now? A. No.

Q. Now, these items here for which you say you have no vouchers. How did you find the amount of these items; how did you keep them? A. Just kind of remembered them, and certain things

I bought I did not remember that I bought, and different things that I bought and remembered.

Q. What different things? A. Different things around the house, and children's clothes and trunk, and things like that.

Q. How did you fix the date? A. Between my sister and me we would remember it.

Q. You depended entirely on your memory for these
25 things? A. First the receipts and then the memory.

Q. Then you have here, in September, 1898, two items for dentistry, one for Marie and one for Loretto—one for \$2 and one for \$6. How did you come to remember them? A. At the same time I had my teeth fixed.

Q. Why did you not get receipts from the dentist for that? A. I could not, because it was a cash sale—I mean cash. I went to the doctor, and he gave me a receipt. I had a receipt, but I could not find it—it was mislaid.

Q. Did you get receipts for those two items? A. I had receipts; but they were mislaid.

Q. Did he give you others? A. He gave me another, but I misplaced it.

Q. The one that he gave you; have you it now? A. No, sir.

Q. What dentist was it? A. Dr. Hammett.

Q. Where is he? A. On New York avenue. That is where he was.

Q. You have an item here of September, 1898, Dr. Mallon, \$6. Do you remember that? A. I do not remember how I remembered that. But I remember paying it.

Q. You say you have no receipt for it? A. No.

Q. Have you any receipts from Dr. Mallon? A. I could have had; but I did not try.

Q. You have no receipts from Dr. Mallon? A. I had some receipts; but I do not know whether I have them now. I had Dr. Mallon several times for the children.

26 Q. You are sure that is not a double charge? A. Oh, no.

Q. Did you not at different times have a considerable amount of money from the sale of real estate belonging to the children? A. You mean rents?

Q. No, from the sale of property? A. I do not know what you mean. I did not sell any property.

Q. Did you not sell 1228 32nd street? A. I bought it; did not sell it.

Q. You did not sell any property? A. I bought property.

Q. With what money? A. With Catholic Knights money.

Q. What is that? A. An insurance.

Q. You bought that with the insurance money? A. Yes, sir.

Q. You have an item here of \$11.55 Donahue, agent, for repairing. How did you fix that? A. I guess I have a receipt for that.

Q. No; you have no receipt here. A. It must have gotten lost.

Q. How do you remember that? A. Let me see. How did I remember it? For whom?

Q. Donahue, agent for repairing. A. I guess I had it and lost it. I did not have any memorandum.

Q. How did you come to remember it? A. I could remember it of course.

Q. This was September 22, 1898. A. Yes.

27 Q. How did you come to fix that item of \$11.55? A. Because I remembered it.

Q. Do you not know that Mr. Donahue allowed for that in his statement to you for the rents? A. No; I do not think he did.

Q. You do not think he did? A. No.

Q. Did not he as a rule take out the repairs in his rent statements? A. Some he did and some I had done myself.

Q. And you say you paid him \$11.55? A. No; not him; I paid the amount. But it came out of his statement.

Q. Do you know what workman you paid? A. Yes; a colored man.

Q. What is his name? A. Hawkins.

Q. Do you know where he lives? A. No; I could not tell you where he lives.

Q. You could not find him now? A. Of course I could, if I hunt for him.

Q. When did you last see him? A. I could not tell you. I have not seen him since he did the work.

Q. That was in 1898. A. Yes.

Q. How did you come to get him? Did Mr. Donahue send him to you? A. I do not know whether he did or not.

Q. On October 1, 1898, you sent a birthday box to Loretto, for which you charge \$8.25. How did you fix that amount? A. I remember the things—what they cost.

Q. You did not have any memorandum of it? A. No. It was Christmas times, and I could not get—

28 Q. All these items in here which you have paid for the children on different days during November, October and December, 1898, you just put down from your recollection. Is that it? A. Yes.

Q. You had nothing to go by except your memory? A. Just memory. I remembered getting the things at the time.

Q. Did you have any bill for this item of dresses at Lansburgh & Brother, \$7? A. No. That could not—

Q. You have an item here charged of \$4. for a seamstress. Was that for the children? A. Certainly.

Q. What did you fix that by? A. Because I remembered what she charged at the time.

Q. Back in 1899? A. Yes.

Q. Did you have a seamstress after that? A. Yes, sir—several times.

Q. You remembered each charge; did you? A. Yes.

Q. In January, 1899, you have charged here car fare etc., \$3. What was that? A. Taking them different places—taking the children around.

Q. On the street cars? A. Yes.

Q. How do you remember that? A. Because I remember what I had in my pocket book at the time.

Q. That included your fare and the others? A. Certainly.

Q. In April you have a charge of \$2 for car fare. You remember that in the same way? A. Yes.

29 Q. And in the same way you fix the \$18.50 for Christmas tree toys and things like that—all by your memory? A. Yes; by my memory.

Q. Now, then, in May, 1899, you have a charge here of \$30 for Edgar Thornton, for roofing and spouting on 1607 33rd street. How do you fix that? A. Because I remember the time. I tried to get a receipt from him; but he has gone out of the city and is living in Philadelphia. I went to his father's but could not find him.

Q. You remembered the amount? A. Yes.

Q. Then you have an item here for John King, painting and whitewashing 1607 33rd street. How did you fix that? A. I remembered the same way.

Q. Did you try to get hold of him? A. Yes, sir.

Q. You could not get any receipt? A. No, sir; he was sent to me at the time. But I could not find where he went.

Q. Then you have an item here of \$10 to Edward Ashby, carpenter? A. Yes. I sent for these people to do the work, but I could not find where they lived.

Q. In May 1899, you have an item for commencement dresses, goods and making them? A. Yes.

Q. How do you fix that? A. Because I remembered buying the dresses.

Q. Who made them up? A. I had some of the dresses made at the Convent of the Good Shepherd, I think.

Q. Did you get any receipt. A. Yes. But I lost that receipt. But I could have gotten another one.

30 Q. You did not try to get another one? A. No; because the sisters know it was made there.

Q. You have an item here for boat fare. What was that? A. Going up and down to Leonardtown—not Leonardtown, taking them down to Norfolk.

Q. That was in 1899? A. Yes.

Q. How old were the children then? A. I could not tell you.

Q. What are their ages now? A. I guess the youngest is 14.

Q. That amount included you and the children? A. Oh, yes.

Q. In May, 1899, you have an item for \$8 to Dr. Mallon. How do you remember that? A. I remember it was paid.

Q. Did he attend the children? A. Yes.

Q. It was not for medical attention to you? A. No. I did not charge anything but my fare to the children.

Q. Were the children here or in Leonardtown in 1899? A. They were here.

Q. This boat fare was the fare up here; was it? A. Yes.

Q. You have no receipts from Dr. Mallon? A. No.

Q. Did you try to get any from him? A. No; I did not. I could not get around; I was sick.

Q. You paid him that in money? A. Yes, sir.

Q. You have an item here on July 4, 1899, for pleasure trips to nearby resorts, \$8.2. What were those? A. Taking them around different places—up the river and different places.

31 Q. How did you fix that amount? A. Because I remembered how much I had to spend.

Q. Remembered away back in 1899? and remembered what you had to spend? A. Yes.

Q. Here is an item in August, 1899, Lansburgh & Brother, dry goods. Have you any receipt for that? A. No.

Q. Did you try to get this receipt? A. No.

Q. Do you know how much they cost, those dry goods that you bought. A. I would remember if I saw it. I remembered at the time.

Q. How did you fix the amount? A. Dresses?

Q. Dry goods, it says here. A. It is different things, I suppose.

Q. How did you fix the amount, \$4.75? A. I remembered at the time of getting these.

Q. How is it that you cannot remember now. A. Remember what?

Q. The amounts, and what they were. A. Do you want me to tell what the dresses were?

Q. Tell us what they were. A. Towels and different things, and underwear for the children.

Q. Do you know how much the towels cost? A. Yes.

Q. How much? A. I believe a quarter for two.

Q. Do you know how many towels you bought? A. I know I got a half dozen every time they went to Leonardtown.

Q. Do you remember this particular occasion? A. No, sir.

32 Q. How do you remember what the amount was? A. Because there were other things I bought—underwear.

Q. Do you remember what the other things were. A. Yes.

Q. What were the prices of the particular things you bought? A. I could not tell you exactly the prices now. I remembered at the time; but I do not remember it now.

Q. Did you make a memorandum at the time you bought them? A. I made a memorandum; but I lost it.

Q. When did you lose it? A. Sometime ago.

Q. How long ago? A. How, long ago?

Q. Yes? A. I do not remember.

Q. Since you made this account? A. Yes.

Q. When you made this trip to Harper's Ferry, August 15, 1899, how much did you have to spend? A. How much I had to spend I could not tell you now.

Q. Did you keep any memorandum of that? A. No.

Q. In August, again—August 15—you bought some more dry goods at Lansburgh & Brother. Do you remember how much that was? A. I could not tell you.

Q. And another trip to Mt. Vernon on the same day that you went to Harper's Ferry. Do you know how much that was? A. My sister made the trip to Mt. Vernon.

Q. Do you know how much that cost? A. No.

Q. September 1, 1899, you have a charge here for boat fare. A. That was for taking them back to school.

Q. How much was that? A. I do not remember exactly the boat fare. It was a dollar and a half—I could count it up.

Q. Take your time and count it up. A. A dollar and a half for each of the children—that would be \$3; and the meals on the boat would be \$3.50—about seven dollars going up and down.

Q. Seven dollars? A. Including myself. I did not take them that time.

Q. That was September 1, 1899? When you made up this account, what memorandum did you have? A. Different things that I thought of.

Mr. DOWNING: You are referring to those without vouchers.

Mr. LAMBERT: Without vouchers or memorandum. (To the witness) Did you have vouchers? A. For some I did; for some I did not.

Q. What memoranda did you have? A. A little slip, because my sister kept some things for me. I do not remember anything about them.

Q. What did you do with the memoranda? A. *It was just a little piece of paper.* I do not know. I had to do that.

Q. Have you that memoranda now? A. No, sir; in moving I burnt them up.

Q. *All the papers* connected with this thing and everything? A. Yes, sir—in moving.

Q. You do not know what things you had memoranda for? A. No, sir; I could not tell you.

Q. You have an item here of September 10, 1899, for board and washing, June to September. How did you fix that? A. Because I knew how much I charged myself.

Q. You knew how much you charged up. How much did you charge? A. Thirty dollars a piece.

Q. From September to June? A. Yes.

Q. That was three months? A. Yes.

Q. Then there is an item of October 4, a birthday to wards, freight and express? A. That was Loretto's birthday.

Q. How did you fix the charge for that? A. I remembered each time what I would get.

Q. Do you remember now what you got at that time? A. No; I do not remember now, because there were so many different things in the box, candies cakes and fruit.

Q. You remembered at the time? A. Yes.

Q. What do you mean by at the time? A. I remembered at the time what things I had.

Mr. DOWNING: Ask who assisted her.

The WITNESS: I had other people, sister and myself.

By Mr. LAMBERT:

Q. October 4, you have an item here for business trip of guardian to Leonardtown? What was that? A. I went to see Loretto's—

Q. What was the cost of that? A. Going up and down, four or five dollars for me.

Q. Where did you stay down there? A. At the convent.

Q. Did you pay at the convent? A. No. Sometimes I would pay.

35 Q. You have an item here for medicine. How would you fix those particular items. A. How would I fix them?

Q. Yes? A. I would remember at the time of getting them.

Q. Then you have another item here for Dr. Mallon, January, 1900. How much was that? A. I do not know.

Q. You do not know? A. No.

Q. How did you fix it for this account? A. I could not tell you now.

Q. Did you have any receipts? A. No; I did not.

Q. You have another item here for Dr. Hammett? A. Yes; he is the dentist.

Q. Two items for that. Now, you have an item for fare to Leonardtown by way of Baltimore. How much was that? A. I could not tell you. I did not take the children.

Q. In June, 1900, you have an item for bringing the children up from Leonardtown. Were you with them at that time? A. 1900?

Q. Yes? A. I cannot—I do not remember now.

Q. You do not remember whether you were with them or not? A. I know I was bringing them up and down, and was often with them.

Q. In August, 1900, you have an item for a trip to Norfolk by advice of doctor for Marie and Loretto. Were you with them at that time? A. No.

Q. Who took them at that time? A. My sister, and Sister Mary Catherine.

36 Q. Do you know how much that cost? A. No.

Q. How did you fix the amount? A. By my sister. She went with them at the time.

Q. In September, 1900, you have a charge for boat fare to Leon-

ardtown. Did you take the children at that time. A. In what year—1900?

Q. September, 1900. A. I could not tell you that. Yes; I guess I did.

Q. Do you remember how much that cost you? A. About the same, I think. It always cost the same, only when I spent something different.

Q. You say the same amount? A. The same amount each time?

Q. No; you have different amounts here. A. Unless I got something extra going down.

Q. What is the fare to Leonardtown? A. It was \$1.50.

Q. For children? A. Each way for Marie and Loretto too.

Q. How much for you? A. \$1.50. And the state room was a dollar, and then there were the meals.

Q. How much would it amount up to? A. I could not tell you.

Q. How much were the meals? A. Fifty cents a piece.

Q. How much would you get? A. There were only three of us to get meals on the boat.

Q. Only one meal? A. Yes—supper. We would not take one in the morning.

37 Q. You would not take breakfast? A. No.

Q. In September, 1900, there is an item here for board and washing, K. N. Corcoran, June 10 to September. Do you remember how much that was? A. Yes; it was paid at my house.

Q. How much was that? A. Thirty dollars a piece.

Q. June 10 to September what? A. September 1.

Q. Now, in October, 1900, you have a charge for car fare and incidentals. Do you remember how much that was? A. No—not now.

Q. How did you fix that? A. I remembered it at the time, how much I had in my pocket book.

Q. You remembered at the time you made this account what amount you had in your pocket? A. At this time I remembered it.

Q. Do you mean at the time you made up this account you remembered how much you had in your pocket back in 1900?

A. At the time I made the account I remembered how much it was.

Q. Do you now remember how much it was? A. I could not tell you now; it has been some time ago.

Q. You remembered from October, 1901, to the time you made up this account, how much money you had in your pocket?

A. Yes.

Q. You have a charge here for Dr. Crosson, in December, 1900. For whom was that? A. Marie.

Q. Do you know how much that was? A. No.

38 Q. Have you any receipts for it? A. No. I could have had one at the time—I could have gotten it.

Q. Is Doctor Crosson in the city? A. Yes. If I tried, I could have gotten it.

Q. K. M. Corcoran, board and washing. Do you know how much that was? A. Sixty dollars. That was December, 1900.

Q. Yes? A. Do you mean for December?

Q. Yes? A. I thought you meant the three months.

Q. December, 1900? A. I do not remember how much I charged then—two months.

Q. How long were the children here in December? A. Two weeks, altogether—ten days.

Q. How much did you charge? A. I do not know now.

Q. How much were you in the habit of charging? A. Half of what is down on there.

Q. How much did you charge? A. Thirty dollars a month.

Mr. LAMBERT: The witness has ten dollars down here.

The WITNESS: Yes.

Mr. DOWNING: Tell the witness what it is she has down there. It is proper that you should tell the amount when you ask her a question.

By Mr. LAMBERT:

Q. In January, 1901, you have an item here "Ward's return to school in Baltimore." What do you mean by that? A. My sister taking her back to school.

Q. What school is that? A. She went by way of Baltimore. You will see if you will look at it.

39 Q. It says school in Baltimore. A. That is a misprint.

Q. Do you remember whether anybody went with them? A. I do not think anybody did. They met some children in Baltimore. They had to go there first, and the children went by way of Baltimore, and they met some children there and went to Leonardtown.

Q. They went with some children? A. Yes.

Q. You did not go? A. No.

Q. January, 1901, that was. What was the cost of taking them at that time? A. I do not remember. What was that? (Addressing sister of former guardian.)

Q. I want your recollection. A. I cannot remember. I have lost my memory.

Q. In April, 1901, you have an item here "Business trip—guardian to Leonardtown." Did you go to Leonardtown at that time? A. Yes.

Q. Why did you go down there? A. To see Sister Mary Catherine.

Q. Was it something on account of the children? A. Yes.

Q. How long did you stay? A. About three days, I think. You have to stay there about three days.

Q. How much did that cost you? A. I could not tell you. To go down and up again?

Q. Yes? A. About \$1.50. I told you before it is a dollar and a half both ways, going and coming—\$3. The state room is a dollar.

Q. In June, 1901, you have an item here for "summer hats, Bon Marche." Could you not get any receipt for them?
 40 A. No.

Q. Do you not remember how much that was? A. No.

Q. In June, 1901, did you go down to the children? A. June, 1901?

Q. A year ago, this last June. A. I forget now whether I did or not.

Q. That you do not remember? A. No.

Q. In September, 1901, you have an item, board and washing, June to September. How much was that? A. Board and washing?

Q. Yes? A. From what?

Q. June to September. A. The same—\$30 a piece.

Q. Does that mean \$30 for the full month? A. \$30 a piece.

Q. For the month? A. \$30 for the whole time.

Q. \$60 for the whole time? A. Yes.

Q. During that time how long were the children at Atlantic City?
 A. How long?

Q. Yes? A. Two weeks, I think.

* * * * *

The REGISTER: If you ask the witness about items in her account, she is entitled to see the account. There is no question about that.

By Mr. LAMBERT:

Q. In August, 1901, you have an item here, "Pleasure trips for ward, Atlantic City, the guardian in charge, advice of doctor." Do you remember that? A. Yes.

41 Q. Did you take the children at that time? A. Yes, sir.

Q. How long did you stay there? A. About two weeks.

Q. Where did you stay there? A. In Atlantic City?

Q. Yes? A. I could not tell you the place now, what hotel.

Q. You cannot tell what hotel you stopped at? A. No.

Q. Were you there by yourself? A. Yes, sir.

Q. Your sister did not go with you at that time? A. No, sir.

Q. What did they charge you a week? A. I could not tell you now.

Q. You do not remember? A. No.

Q. Do you know what the whole bill was? A. Not now.

Q. Did you ever make a calculation of how much it was? A. Yes, sir—at Atlantic City?

Q. Did you get a memorandum of that? A. Yes, sir—at that time.

Q. At what time? A. When we were at Atlantic City.

Q. You had a memorandum at Atlantic City? A. Yes, sir.

Q. Where is that? A. I could not tell you. I looked for it, but could not find it.

Q. You looked for it, but could not find it? A. I have made a good many searches but could not find it at all.

Q. And you made up this item from memory? A. I had it at the time.

Q. When was it that you made up this item? A. I have been sick since then. I do not know anything about it.

42 By Mr. DOWNING:

Q. When did you make it up? Was it before or since your removal? A. What do you mean?

Q. Did you make it up prior to your removal as guardian, or since? A. Since.

By Mr. BRANDENBURG:

Q. Did you have a memorandum of this trip to Atlantic City after you made that report? A. Yes, sir. But I have been sick, and have moved since.

By Mr. LAMBERT:

Q. Did you not say that you looked for that memorandum and could not find it? A. I had it at that time, I said.

Q. Did you not say you looked for it at that time but could not find it? A. I do not remember now. I have not any memory.

Q. You are positive you had the memorandum at the time you undertook to make up that account; are you? A. Yes, sir; at the time.

Q. But you do not know what you did with it? A. No.

Q. After you made up that account, what did you do with the memorandum you had? A. They were around that place; but I suppose they were lost.

Q. Did you separate them from those vouchers, or were they all together? A. I could not tell you.

Q. Was it at a hotel or cottage that you stopped when you were at Atlantic City? A. I remember it being at a cottage.

43 Q. Do you remember how much you paid and at what cottage it was? A. I have it at home.

Q. How much? A. Ten dollars.

Q. And how much for the children? A. Six dollars for the children.

Q. Was that \$3 a piece for the children or \$6. A. The two \$6.

Q. That would make \$22 a week for the three of you? A. Yes. I do not know what it would make.

Q. Now, in November, 1901, you have an item, "Car fare and incidentals," \$3.25. How did you fix that? A. I do not remember.

Q. You do not remember? A. No.

Q. Would you put it down as you spent a quarter for car tickets or anything like that? A. I would at the time. But I have lost them all.

Q. And in December again, the following months, you have "Car fare \$1." What was all that car fare for? A. Taking the children around. They had to go and visit people, and had to use car fare for them.

Q. How long were the children here in November, 1901? A. November?

Q. Yes? A. I do not remember.

Q. Were they here at all in November, 1901? A. I do not remember.

Q. In June, 1902, you have an item, "K. M. Corcoran, board and washing, June 18 to July 3, for wards 20." How did you remember that? A. June and July?

Q. Yes? A. That must be wrong.

Q. June 18 to July 3. Were they here that summer? A. Oh, that is so. They were here only two weeks.

Q. From June 18 to July 3? A. Yes.

Q. Then in June, 1902, you have an item, "Pleasure trip nearby resorts. Where did you go? A. To Georgetown university.

Q. Is that the only place you went? A. That is all.

Q. That cost \$3.75. A. Yes. I gave them that to spend.

Q. Did you charge them for board and washing in 1901 while they were down at Atlantic City with you? A. Board and washing there?

Q. Yes? A. I had to have it done, of course—the washing.

Q. I am speaking now about the board and washing at home. You have an item here, "Board and washing, June to September \$80." and in August you had them down to Atlantic City. You charged them for their board here while you had them down at Atlantic City? A. No; that must be wrong.

Q. Do you know how much it amounted to? A. No.

Q. As a matter of fact all these items in here, without vouchers, are just made up from your recollection? A. Recollection and sister, and things that would come to my memory—a good many things, and the vouchers that I had and lost.

45 Q. When you would collect the rent for the property, as agent from time to time, did you or not put the money to your own account? A. How do you mean?

Q. Deposit it to your own account? A. In my own name?

Q. Yes? A. No, sir; only as guardian.

Q. You put it in bank as guardian? A. Yes.

Q. How did you get the money out if you have no checks? A. I got it out by checks. But I have not them now.

Q. Whom would you draw the checks to? A. To my own name, as guardian.

Q. You would draw them payable to yourself? A. Yes, sir.

Q. And in lump sums? A. Yes, sir.

Q. And when you made up this account, you had no account to go by but your recollection?

By Mr. DOWNING :

Q. In making up these items, did you have your sister with you?
A. My sister and other people who live in the neighborhood.

Q. And it was on that that you base this account? A. Yes, sir.

Q. You filed this account here in 1898. Were those items that Mr. Lambert first spoke about as having come to your hand accounted for in this account, and what, if any moneys, did you receive since you filed this account? A. I have not received any but the rents.

Q. But the rents? A. That is all. I do not know what
46 they are talking about—the insurance—unless they mean the Catholic Knights insurance.

Q. That is accounted for in here? A. Yes, sir. I do not know anything about the insurance.

Q. The life insurance is accounted for in here? A. Yes, sir.

By Mr. LAMBERT :

Q. I asked you about the building association? A. I do not know anything about that. I do not remember any building association.

Q. You say that you made up this account with the assistance of friends. Who were those friends? A. My sister and Mr. Ryan, Mr. Dolan's cousin.

Q. Where does he live? A. Down in South Washington.

Q. What is his number? A. 1014 South Capitol street.

Q. What is his name? A. Thomas P. Ryan.

Q. They are the only ones who assisted you? A. That is all.

By Mr. DOWNING :

Q. What did Mr. Thomas Ryan do for you in the matter? A. He made out this account.

By Mr. LAMBERT :

Q. Now, by this account, the first account which you filed here, in 1899, you show vouchers for all your expenditures? A. Yes.

Q. You show how you spent the money and were given receipts for it? A. Yes.

47 Q. Why did you not keep up that practice? A. Because my health failed me, and I could not attend to the business.

Q. Who did attend to it? A. My sister helped me.

Q. She did not keep any vouchers? A. No.

Q. How much money have you on hand at the present time. A. I have not any.

Q. You have none? A. No.

Q. You claim vouchers for \$3,754.15? A. Yes.

Q. Those you kept. But you claimed that you have spent \$1,235.49, for which you had no vouchers? A. Yes, sir.

By Mr. BRANDENBURG :

Q. Did you not tell counsel the other day that you had \$500 in cash? A. I had it; but I lent it. But it was not the children's money it was my own.

Q. What became of this \$2,700 which you are deficient? A. I spent it on the children. I had a good many vouchers that I lost.

Q. Where did you keep your account?

Redirect examination.

By Mr. DOWNING :

Q. Did you keep an account in the West End bank? A. That was my own, as I stated.

Q. You kept your own account there? A. My own account yes.

Q. You kept no guardianship money there? A. Oh, no; that was my own money.

48 By Mr. BRANDENBURG :

Q. Have you the check book which you used as guardian? A. I do not think I have, because everything I had my sister burned up.

Q. What is the check book you have, your individual account? A. I have that.

Q. You saved those? A. I have but one fifty cents in bank.

Q. I mean the memorandum book, the stubs of those that were torn out. What became of those? A. I have those at home.

Q. You have them? A. Yes.

Q. But your sister destroyed the guardianship account? — The sister of former guardian. I tore up everything.

Mr. BRANDENBURG: Excuse me. (To the witness :) Why did you have these torn up and burned?

A. My sister did it. She did not know it. It was when I was sick. I did not have any papers at all.

By Mr. LAMBERT :

Q. When was the last time you deposited any of the children's money in bank? A. Indeed I could not tell you.

Q. Was it a year ago? A. I could not say.

By Mr. BAKER :

Q. Two years ago? A. I could not tell you.

By Mr. LAMBERT :

Q. You cannot tell whether you deposited any or not? A. No, sir.

49 By Mr. BRANDENBURG :

Q. When you made up this memorandum of accounts for which you had no vouchers, tell us who assisted you? A. Nobody but my sister.

Q. And Mr. Ryan? A. Yes, sir; he put it down.

Q. Did you at that time have any memoranda from which you made the entries into that account? A. Different things which showed me how much I spent on the account.

Q. Did you keep any memorandum book in which you entered these things? A. No.

Q. How did you transfer—how did you make up these various items—how did you recollect those various items? A. Through the memory of my sister, because I have not any.

Q. Suppose we were to give you several days' time, is it possible that you could obtain vouchers for any of these items for which you have made charge here, but which are not supported by vouchers? A. I suppose I could. Dr. Mallon is here, and Dr. Crosson.

Q. Of course, you recognize the position in which you are—short in your account—\$2,700, and liable to a criminal proceeding against you. I ask you whether, in view of the gravity of your position, we should give you a week's time in which to support your report with vouchers, you could get more vouchers to correct the amount which you are deficient. A. I could not tell you.

Q. Have you any idea how you spent this \$2,700 which you are short? A. Only on the children.

Q. You are sure you spent it on the children? A. Yes, sir; I am positive.

50 Q. It did not go to your sister? A. No, sir; nor to my benefit.

Q. Did not go to your benefit? A. No, sir.

Q. And was all used on the children? A. Yes, sir.

By the REGISTER :

Q. I understand from you that this statement of account which you file in this case was made up since you were removed as guardian? A. Yes, sir.

Q. Am I to understand you as saying that, at the time you made up this account, you had for the items for which you cannot produce absolute vouchers, memoranda of various kinds? A. Yes, sir.

Q. And that since then those memoranda have been destroyed? A. Yes.

Mr. DOWNING : I do not think the witness means that.

The REGISTER : I understood her to say that.

Mr. LAMBERT : She did not say all, but many of them.

The REGISTER : She said she had for some of them. (To the witness) How many do you think you had memoranda for? A. Indeed I could not tell you.

Q. Half of them? A. More than half.

Q. You said there was more than half? A. Yes, sir.

By Mr. LAMBERT:

Q. Why did you not put that memoranda away with the vouchers you kept? A. I do not know. It was because——

51 Q. You took good pains to keep the vouchers which you had; why did you throw away the memoranda? A. I did not throw it away. It was mislaid.

Adjourned to meet on Friday next, the 21st inst., at 3 o'clock p. m.

51½

"Nov. 21, 1902." * * *

"Dr. H. J. Crosson, 806 19th street, Washington, D. C.

Miss Corcoran is sick and under my professional care. Miss Corcoran will be unable to leave her bed for some time.

H. J. CROSSON.

* * * * *

Adjourned until Saturday next, 29th instant at 10 o'clock a. m."

"NOVEMBER 29TH.

Met pursuant to adjournment.

Examined Edgar P. Berry and W. D. Hoover.

Adjourned until Dec. 18, 1902 on account of sickness of Miss Corcoran."

52

DECEMBER 18, 1902.

CATHERINE M. CORCORAN, recalled.

By Mr. DOWNING:

Q. With regard to what is charged in this account as chattels, I will ask you what you did with them? A. Those are what I gave you in the satchel—jewelry. Those are in the satchel—a silver pitcher, oil painting, are in storage.

Q. So that, what I have and the small oil painting and silver pitcher are charged against you here are chattels?

Mr. LAMBERT: How has she those charged in the account?

Mr. DOWNING: As chattels.

Mr. LAMBERT: Against her?

Mr. DOWNING: No, these are chattels appraised at the time at \$36.25.

The REGISTER: Appraised against her in the inventory.

Mr. DOWNING: Yes. The inventory will show that. So that, they will go out of the statement. (To the witness:) In making up these items for which you have presented no vouchers, I will ask you whether or not you were able to find any memorandum made

at the time that the expenditures were made since your last hearing?
A. Yes; I found a book that I thought was burned.

Q. Have you that book? A. Yes.

53 Q. Where? A. Home.

Q. Will you produce it? A. Yes.

Q. For what period of time does it cover? Well, the book will speak for itself. It is kept by date; is it? A. I think it is; yes.

Q. It will speak for itself when it is introduced. I find in this statement in your last testimony that a number of questions were asked you about trips to Leonardtown. I wish you would state how you generally calculated those items that are stated in the account; on the theory of trips to Leonardtown? A. Why, the fare going down.

Q. How much was your fare? A. A dollar and a half.

Q. And how much were the suppers? A. Fifty cents for me and a quarter a piece for each of the children.

Q. Fifty cents for you and a quarter for each of the children for supper. How much for the state room? A. Going down, a dollar, and coming back another dollar.

Q. That would make two dollars? A. Two dollars.

Q. And what was the children's fare? A. Seventy five cents each.

Q. A dollar and a half for two? A. Yes, sir.

Q. And coming back what was the expense to you? A. For myself fifty cents for supper.

Q. And what was the car fare. A. Twenty five cents.

Q. Were there any other charges beside those? A. Sometimes going down I might take a box down—different things; fruit; sometimes a dollar, and sometimes, maybe less.

54 By the REGISTER:

Q. Was the dollar and a half for the round trip? A. Yes, sir.

By Mr. DOWNING:

Q. The round trip was a dollar and a half? A. Yes, sir.

Q. Now, you have charged here in October 1899, I think it is, business trip of guardian to Leonardtown, \$11.50. Were there any extra charges included in this amount beside the usual fare? A. What month is that?

Q. October, 1899. A. I think that was Loretto's birthday, and if it was, I took a box down, a birthday box—different things you know, and some flowers.

Q. Do you remember the date of her birthday? A. The 6th of October. Of course, I went down a couple of days before. I could not tell you exactly when the boat went down.

Q. Some of these times you went by way of Baltimore? A. Of course, the school would open the first Tuesday in September, and it was requested that the children should be back in time, and in order to be there, went by way of Baltimore to be there on that date.

Q. Otherwise, it would have been impossible to be there on time?
A. Yes, sir.

Q. What difference would that make? A. The fare from here to Baltimore.

Q. Did you ever permit the children to go by themselves to Leonardtown? A. No.

55 Q. Who went with them as a rule? A. My sister went once, and Mr. Ford and myself went with them as far as Baltimore, and then they met a young lady there and went down to Leonardtown.

Q. Who else went with them besides you and Mr. Ford and your sister? A. Any time?

Q. Yes? A. Once Sister Katherine went with them.

Q. Was that the only time that the sister went with them? A. I do not remember.

Q. You do not remember any other time? A. No, sir.

Q. You are positive that somebody always went with them? A. Someone always went with them.

Q. Did you or not pay the expenses of that party? A. No; they paid for themselves.

Q. You did when you went or your sister went? A. Yes.

Q. You did not pay for Mr. Ford? A. No.

Q. That was the only time that you yourself or your sister did not go with them? A. Did not go.

Q. Have you made any effort to get any more of these doctors' receipts? A. Yes. I sent to Dr. Mallon, and he is going to make it up for me.

Q. Will you promise to see Dr. Mallon between now and the next time we meet and get the receipts from him? A. Yes.

Q. And also Dr. Hammett? A. Yes—the dentist.

Mr. DOWNING: This book was kept up to the time of rendering the last account, about a year. It will help some. (To the
56 witness) I want to ask you in regard to these children, whether or not they were extravagant in their tastes? A. Yes; I think they were.

Q. If so, state in what way? A. If we took them any place, they wanted everything they saw, amusements and so on, as children will, and, of course, I gave them to them.

Q. I want to ask you also whether or not in making up the statement for which you present no vouchers, you have no memoranda, you relied upon your own recollection alone? A. No; my sister helped me out a good deal.

Q. And what would be the reason which would enable her to help you out—what connection had she with the expenditure of the money? A. I would have some little papers, and the next time my cousin would come, she would put it on the book, this first year.

Q. I am speaking about your statement which was presented here.

What was it that made it possible for your sister to remember items which you did not remember?

(By Mr. DOWNING:)

Q. It is hard to put the question without being leading. State whether or not your sister ever made any of these expenditures on your behalf and for the children? A. Do you mean did she spend the money for me?

Q. On the children—whether she would take them around and buy things? A. Oh, yes. I did not understand you at first.

Q. Are those the cases in which she assisted you in making
57 up this account? A. Yes. And going that time to Norfolk, you know.

Q. State about that trip to Norfolk. I think you charge here is \$25. Did she make only one trip to Norfolk? A. She made two trips.

Q. Who was it went with your sister at that time? A. The first time the sisters went—two of the sisters—two or three; I do not know which.

Q. That made up this item of \$25. A. My sister and the children

Q. That was in August, 1900. I see you have another item? A. They stayed in Norfolk a day or so, too.

Q. How is that? A. My sister and the young lady stayed down there a day and a night.

Q. With the children? A. Yes. The sisters came back and left them down there.

By the REGISTER:

Q. Who carried the sisters down? A. The sisters went down and took the children with them, and my sister and another young lady went with them on the trip. The sisters wanted them to go.

By Mr. DOWNING:

Q. How long were they down there? A. A day and night. And coming back they got their meals and fare.

By the REGISTER:

Q. Two adults and two children. Do you mean the two sisters? A. My sister and another lady. The sisters, of course, paid their own fare.

58 By Mr. DOWNING:

Q. Whose expense does this \$25 item include? A. My sister's and that of the two children.

Mr. DOWNING: Mr. Lambert, these items before which you have figures are those the ones you question?

Mr. LAMBERT: We except to all those that we have figures before.

Mr. DOWNING: Do you except to the balance?

Mr. LAMBERT: Not unless they have figures before them.

By Mr. DOWNING:

Q. Here is an item for boat fare to Leonardtown, guardian in charge. Can you explain that? That was in September, 1900?

A. Going back with the children, you see, and taking some things down with them, I suppose.

By Mr. BRANDENBURG:

Q. In these trips to Leonardtown, you have charged the lump sum of \$10. Is that supposed to cover any addition to the actual fare and meals—any incidental expense which you incurred on the trip?

The REGISTER: The witness said it did.

The WITNESS: Yes.

Mr. DOWNING: I think it is agreed between Mr. Lambert and myself that the item for incidentals is not excepted to.

Mr. BRANDENBURG: That is very good. That saves us a good deal of trouble.

59 Mr. LAMBERT: That is very good. There are only two or three of them.

By Mr. DOWNING:

Q. Here is an item, furs for wards, two sets, in September, 1900, \$9.96. A. Do you mean furs?

Q. Furs for wards, two sets, \$9.96. A. Yes. I got them at Lansburgh's.

Q. Who purchased them? A. I did.

Q. How much did you pay for them? A. \$9.

Q. He charged you \$9. A. I think it was something like that.

Q. You charge here, \$9.96. A. Yes.

Q. Have you any memorandum from which you made that up?

A. No. But I remember the furs. I remembered what I bought for them at the time, and I think I have them on the book.

Q. You think you have them on the book? A. Yes.

The REGISTER: For probably a year after this last account was rendered.

Mr. DOWNING: That would throw a good deal of light on transactions after that. I am glad that has come to light.

By Mr. DOWNING:

Q. Do you think that that book contains all the items for a certain period? A. For a year, I guess.

Q. For the period it covers? A. Yes.

Q. How was it kept; by yourself? A. Sometimes I would get my cousin—when she would come in, she would put it down for me. I would remember it from one week to another, and when she

would come—she was teaching music in the house—she
60 would put it down. The other day she reminded me of it.

Q. And that covers a certain period? A. Yes.

Q. Are you sure that it covers all that period too? A. I do not know.

Q. And as to these items, when you went into the book it refreshed your mind? A. Yes.

Q. And during this period you were telling Miss Lackey to write these down? A. Yes.

Q. You think there may have been some that you may have omitted to tell her to write down? A. I do not know.

Q. How about one half dozen handkerchiefs, \$1.50, December 1900? A. A half dozen handkerchiefs, \$1.50, in 1900?

Q. Yes. A. When the children were going back to school, I gave one of them a half dozen handkerchiefs as a present for the sister down there.

Q. This item? A. What day do you mean?

Q. It does not give the day; but the month is December, 1900. A. I remember buying handkerchiefs on two occasions to give to the teachers when the children went back to school.

Q. That would be a quarter a piece for the handkerchiefs? A. Yes. They were large handkerchiefs.

Q. In April, 1901, you have an item a business trip of guardian to Leonardtown, \$12.50? A. The 12th of April?

Q. Yes—1901. A. The 12th was Marie's birthday, and I went down and took her a box.

Q. October was the other girl's birthday? A. Yes—6th of October.

61 Q. And the difference—— A. Would be what was in the box; and I suppose a present.—I think I brought her one down.

Q. Car fare and incidentals? You have here, May 1901, car fare and incidentals. How much of that is incidentals? A. I generally used to have a mass said for my brother every month, and I was first told in court not to mention that.

Q. Who told you? A. Mr. Dolan. He told me that they would not allow that.

By Mr. BRANDENBURG:

Q. These masses that were said, and for which charges were made, did you have the mass of your own volition, or did you make the request that they be said? A. Yes. And I paid for them.

Q. They were not said at the instance of the children? A. No; And then a couple of times I sent money down to have mass said by the pastor down there.

Q. And is that in the account? A. I do not know whether I put it down here.

By Mr. DOWNING :

Q. Wherever incidentals appears here you think it means mass for the repose of your cousin's soul, the father of these children?
A. Yes.

Q. Let us see how much of this is car fare and how much incidentals. Here is an item of \$3.25 in May, 1901? A. In May?

Q. Yes? A. Incidentals, did you say?

Q. You have a charge here, car fare and incidentals, \$3.25.
62 How much was incidentals and how much car fare? A. I think I might have added up three masses, \$3. and 25 cents paid for car fare.

Q. What was the occasion of spending 25 cents incidental to the mass. A. Sometimes I would go down town and buy something for the children, and paid that.

Q. How often did you have mass said for your cousin? A. The first year I think I had one every month, and the second year once every six months, like. One year I had it every month.

Q. In addition to that, did you send money to Leonardtown for masses? A. I sent it to Leonardtown.

Q. Is that included in this account? A. I do not know that it was.

Q. Do you remember how much it was you sent the children?
A. \$3.

Q. That was all? A. That was all.

By Mr. BRANDENBURG :

Q. On one or many occasions? A. On a number of occasions—once for the father and once for the mother.

By Mr. DOWNING :

Q. Were these masses said with the knowledge of the children?
A. Yes. And they were pleased to have it done.

Q. In the beginning who requested to have it done; the children?
A. No, my own volition.

Q. But with a knowledge and consent of the children? A. They wanted it done, and in the last two months I myself had a mass said for which I paid personally.

63 Q. Now, here is a charge for the wards return to Washington, guardian in charge, \$7.25. What do you mean by that?

A. In what month?

Q. In the month of June, 1901—\$7.25.

The REGISTER: You need not ask about that.

(By Mr. DOWNING :)

Q. Care fare, and incidentals, \$2.50. How much of that was for masses? A. \$2.

Q. Why did you have two masses said then instead of one?
A. In July?

Q. In July, 1901.

5—1467A

(Mr. BRANDENBURG :)

A. I would not go into that.

(By Mr. DOWNING :)

Q. How about this item of E. Voight, jewelry, \$1.50? A. I had medals for the children, and then I had the watch of Marie fixed, and medals, and I had a clasp put on a chain for Loretto, and I bought her a small ring.

Q. Did you ever apply to Mr. Voight for a voucher for that? A. No.

Q. Was that a cash sale? A. Yes.

Q. Now, a trip to Atlantic City. We want to have some explanation about the charge of \$90 for the trip to Atlantic City, guardian in charge, and on the advice of doctor. What doctor was that?

A. Dr. Crosson.

Q. How long were they there? A. They were there altogether about 10 days.

Q. Ten days? A. Yes.

Q. It included both the children and yourself? A. And myself; yes, sir.

64 Q. At what place did you stop? A. I cannot tell that. The place was carried on by a man named O'Brien. It was a cottage. I could find out; a lady went with me.

Q. You could find out? — Oh, yes; a lady went with us. She was the one who recommended me to go there. And the amusements down there and bathing—we went in bathing every day.

Q. Can you give some idea of the character of the amusements? A. They went on the flying horses several times, and went out on those little pony carts, and each of these was ten cents, you know—different kinds of amusements down there. They took in all those amusements, of course.

Q. Were they insistent about those things, or not? A. Yes. One day we went over to Heintz' pier, and I hired a coach to bring us back.

Q. Is that included in the \$90? A. Yes.

Q. You have an item here in August, 1901, and a charge of \$5.25. Pleasure trips nearby resorts. Can you make an explanation of that? A. Yes. We went to Chevy Chase at one time, and to Cabin John evenings. We used to take them out in the evenings somewhere—take car rides, or something like that.

Q. Did you spend anything beside the car fare? A. Yes; we got cream at Cabin John's, and they got on the flying horses there, and that big wheel.

Q. You mean the miniature Ferris wheel? A. Yes—all those things.

65 Q. Here is an item, care fare in September, \$1.50? A. That is buying things. When I would go down town to buy things for the children. Of course they were charged car fare going down and coming up.

Q. You have a charge here in September, the same year, 1901, of K. M. Corcoran, board and washing, June to September, \$80. You were not very explicit in your testimony before in regard to that item. You just state how much it is. Now, I will ask you to state something about that—how you recollect it? A. Board and washing?

Q. Yes? Do you remember the dates, that is, the day of the month when this charge began and when it was concluded? A. Do you mean the board and washing?

Q. Yes; this item of board and washing. Do you remember the day of the month when it began? A. The school broke up on the 19th of June, and of course they came up on the 20th and were there on the 21st.

Q. What time in September did they go back? A. The first Monday in September when the school first opened.

Q. June to September. What does that item of \$80 include? A. Board and washing?

Q. For both of the children? A. Yes.

Q. You do not know how much that would be—about one month?

Q. How much per month did you charge each one? A. \$30 per month.

Q. That would be about a month? A. From June to September.

Q. Then it is more than a month—two months and a half? A. Yes, sir.

66 Q. You make a charge of \$80 for that. It seems to me that is reasonable enough. Now, you have an item in November, 1901, trimmings, \$1.40? A. In 1901?

Q. Yes?—November 1901, trimmings, \$1.40. Do you know anything about that? A. Trimmings for the dresses.

Q. What dresses? A. The children's dresses.

Q. Do you remember purchasing them yourself, or is this an item that you did purchase yourself? A. Yes, sir.

Q. Are you sure that you yourself purchased this item? A. Yes. It is this gold braid like.

Q. You have also charged in June 1902, pleasure trips to nearby resorts, \$3.75. That is the present year. Do you remember that? A. Yes.

Q. How many of those trips were there? A. It was over to the garden party in Georgetown.

Q. How many times did you go? A. The garden party was one week and we went over three nights.

Q. Which one was that; the garden party to the hospital? A. No; the one before that, the Sunday school.

Q. Trinity Sunday school? A. The Sunday school.

Q. And this \$3.75 is for what? A. Going over, and spending on the grounds.

Q. I think that is right. Then car fare, one dollar, in the same month. A. That was going up and down, I suppose.

Q. Going up and down? A. Yes. Every evening we would take a car ride; and when I went down town with them—I went with them.

67 Q. What was your custom then? A. When I went down to market or shopping I took them with me—very seldom left them in the house.

Q. These items are car fare for those trips? A. Yes.

By Mr. BRANDENBURG:

Q. Now, there are about twelve hundred dollars here for which no account is made whatever. Have you any idea for what that was expended.

Mr. LAMBERT: That is objected to. There is no statement here that that was expended at all.

(By Mr. BRANDENBURG:)

Q. Can you account in any way for the \$1200 that is short? A. No.

Q. In your testimony today you have stated that on several occasions you sent money to Leonardtown for the purpose of masses, and now, for the first time, called attention to the fact that you did not include them in your account. Can you recall any other items with regard to which you failed to do so? A. Yes: I sent flowers down to the convent on three occasions.

Q. To the children. A. Yes—the little ones first communion, and to the larger girl on three occasions, and they cost each time \$3.

Q. And they are not included in that account? A. No, sir; I did not include that.

Q. Can you think of any other items which you omitted? A. No—not at present.

Q. Let me ask you whether or not these wards did not frequently bring guests to your house? A. Yes; they did.

68 Q. Who were they, usually? A. Some of the children from the country down there, and several times we had some of the sisters.

Q. And they were guests of the children? A. Yes.

Q. Did you board and room them at that time? A. The children; yes; and on several occasions several of the sisters stayed.

Q. About how long would they stay at times? A. One of the sisters stayed from Saturday until the boat went down on Wednesday. She was up here with regard to something about her eyes, having her eyes treated, and she stopped with us at that time. And at another time we had a sister who came. That was in the first statement. I never charged that. She had something the matter with her back; and she stayed with me, and I think she stayed three days.

Q. Did you ever charge for the board of these guests? A. No.

Q. And these children were brought up by the wards? A. They were brought up by them; yes.

Q. Did the wards frequently bring other children there as guests? A. Yes. Each year when the children came up they had a girl to come with them, and even last June when they came up they brought a young girl with them, and the little one asked for a lunch to take back to Ohio with her. Every year they would come going and coming, and I never charged any thing for that.

Q. Would these girls stay sometimes with you? A. Well, on Christmas there were three of them stayed two days or so.

69 Q. Have you ever charged lodgings or board for any of those guests of the children? A. No.

Q. You boarded them and roomed them; did you not? A. Yes.

Q. I do not suppose you could tell how often this occurred. A. No, only that every year one or two children would come up with them.

Q. Is your mind any clearer today with reference to the testimony you have given than it was on the occasion you were last here? A. It seems to me it is. I was just trying to think. It was a year or two years ago that a young girl came up from the convent, and their father made our house—they came up, and even this old gentleman stayed at our house, I suppose because he knew the children, and he thought he had the privilege of staying at our house. He stayed there Saturday night instead of going to the hotel. He had supper and lodging.

Q. A stranger to you. A. Yes, sir, a stranger to me, but a friend to the children.

Q. You did not charge him at all? A. No, sir.

By Mr. DOWNING:

Q. Do you know who he was? A. Mr. Kennedy. He belongs in Leonardtown—not Leonardtown. Do you know where Father Tyner is stationed down there?

Q. Father Tyner? A. Yes.

Q. St. Indagoes. A. Yes; that is where he stayed. And then there was another day that a young girl——

70 Mr. LAMBERT: I object to all this testimony about people coming to the house, especially coming there in connection with the children.

The REGISTER: I am disposed to let it come in for what it is worth.

By Mr. DOWNING:

Q. There is one item here that I want to call your attention to, and that is the trip to Harper's Ferry. I omitted that. I did not begin at the beginning, in my examination for some reason or other. How long were you at Harper's Ferry? A. We were up there two weeks.

Q. And this amount that you charge here, \$12.25 whose fare did that include? A. The fare of myself and the children.

Q. You do not remember the fare up and back; do you? A. No; I do not remember that.

Q. How long did you stay there? A. Two weeks.

Q. Was there any other money expended except board and lodging and fare? A. Going round, coaching—amusements up there, going around the country.

Q. Do you remember how much it cost for the coach each time? A. I think each one had to pay a quarter.

Q. Now, this item of September 1st, boat fare, guardian in charge, \$10. That was in 1899? A. That was taking the children back.

Q. To Leonardtown? A. Leonardtown.

Q. And the charge on September 10, Lansburgh & Brother, dry goods, \$10. A. I sent them down dresses, I think, in September.

71 Q. That was the beginning of the school; was it not? A. Yes. Or I may have bought dresses and sent them down there.

Q. Edgar Thornton. Do you remember the roofing and spouting on 1607 33d street? A. He was not here.

Q. That is the reason you could not get the voucher? A. Yes.

Q. This John King item, painting and white-washing. Why could you not get a voucher for that? A. I could not find it. He was a colored man.

Q. You have an item here of boat fare, \$5., in December, 1898. What was that for? A. In December?

Q. Yes?—boat fare, just simply boat fare? A. Just the children coming up.

Q. Did they also come up in December? A. They always came home Christmas time.

Q. And remained until when? A. They generally stayed about 10 days.

Q. Did you charge board and lodging for them in this account every day for the ten days and every year they stayed with you? A. I think so.

Q. In August, 1899, or about that time, how long were the children with you here in Washington—in the summer we might call it. You might look at that; it might recall it to your recollection. (Exhibiting account.) A. In August?

Q. In the summer of 1899 they were up here; were they not? A. Oh, yes.

72 Q. How long did they stay with you? A. They came up on June and stayed just the same—until September.

Q. Did they stay with you every year about that time? A. Yes. And every Christmas they came up too and stayed ten days.

By Mr. BRANDENBURG:

Q. How long were they with you this summer? A. Two weeks.

By the REGISTER:

Q. Suppose you explain that Harper's Ferry item. I understand the item is \$12.50 and yet you say you and the children stopped there two weeks. How does that cover the board? A. I think going up there is what I mentioned.

Q. Do you mean that is travelling expense only? A. Travelling expense.

Q. Do you mean that you charged the children for board during that time? A. I could not tell you.

Mr. LAMBERT: Miss Corcoran covers that period.

Mr. DOWNING: In her board.

By the REGISTER:

Q. How much did you pay for board? A. Eight dollars a week for myself.

Q. How much for the children? A. Six dollars a week for the children.

Q. Each? A. For each.

Q. Now about these flowers that you say were sent to the children. A. I have not charged them.

73 Q. I understand you to say that you have not charged them? A. No.

Q. For what purpose were they sent? A. For the children's first holy communion—for the decoration of the altar.

Q. That is the children's contribution to the altar. A. I sent them for the children, of course.

Q. As their contribution? A. Yes, sir.

Q. I understood you to say that one of the trips of the sister was in the first account, and you did not charge for it in that account. Why was that? A. I suppose I forgot it.

Q. That was your reason for not charging it? A. I do not remember.

Q. Did you ever invite the sisters here? A. I did several times—Sister Mary Catherine.

Q. To visit you? A. If she was coming to Washington, to come and stay with me.

Q. And she did. You were on friendly relations with them? A. Yes. I do not know to the contrary.

Q. These times that you speak of when you invited the sisters, did they come themselves? A. The sister?

Q. The time you speak of in your direct examination? A. They came themselves.

Q. How many times were they there? A. I think twice.

Q. You say the sisters were brought by the children. What do you mean by that? A. The sister came up with the children.

74 Q. Accompanied the children? A. Yes.

Q. You do not mean that the children invited them? A. I do not know that. They came with the children.

Q. In company with the children, to look after them? A. Yes.

Q. And after they got here, you asked them to stay with you?

A. Yes, sir. I do not think they had any other place at the time.

Q. Now, about these different children coming to you? A. I did not invite them.

Q. They came with the children? A. Or to see the children.

Q. After they got here, who asked them to remain at the house?

A. I suppose the children did.

Q. You did not ask them? A. No.

Q. Do you know whether the children ever asked them to remain or not? A. I could not tell you.

Q. You kept house during this period; did you not? A. Yes, sir.

Q. Now, about these repairs by Thornton and the painting by King. Why did you have those things done yourself? A. Why, because they told me they needed it, and the men in the house told me to have it done.

Q. It is mentioned in the account here that Mr. Heenan attended to all the repairs of these houses, except in the two instances. What was the reason for you having that done yourself? A. The lady

75 came around to me and asked me to have it done. She asked Mr. Heenan, and he would not have it done. She went to Mr. Heenan several times, and then she found out where I lived, and she thought I would have it done, and I gave it to this Mr. Thornton, a friend of mine. He has gone to Philadelphia.

Q. Now, about these boxes mentioned in your account, which you charged for as having sent to these children at various times. What were the contents of those boxes? A. Birthday boxes?

Q. I do not know what they were. A. Sometimes I would send fruit, cakes, candy—different things in the line of fruit.

Q. And that is all? A. Sometimes I would send a present, some little thing in the box.

Q. They never contained clothing? A. Oh, no. Well, once it had clothing in it.

Q. What time was that? A. I could not tell you now.

Q. Can you say whether at the time the box contained clothing you duplicated the items in your account—whether you have asked credit for the item of clothing, and also included the item of the box in your account? A. I do not know. I remember once sending shoes in a box.

Q. But you say there were only two instances when that was done: once when shoes were sent and once when clothing was sent? A. Let me see. Shoes were sent a couple of times.

76 Q. In making up the items for that box, did you include articles of clothing which you may have charged for in your account in other places under their proper head? A. Yes; I think I did. It seems to me I sent shoes and different things.

Q. Now, is it possible that elsewhere in your account you put that item of clothing? For instance a pair of shoes, and then again

you included it in the item of the box. Do you understand that?
A. Do you mean both boxes. I do not understand you.

Q. Take this item you have in October \$4.75, and on the same day you have an item for gloves and ribbons of \$2. Did you include that in the \$4.75? A. No, sir. I am positive about the gloves. I was sending the gloves for a birthday present, and I did not include it in the box.

Q. Is that true of all those items? A. Yes; I think so.

Q. You do not think you charged them with the item of clothing, and then charged them again for the same thing in the box? A. No; I do not think so.

By Mr. DOWNING:

Q. In making up these boxes, you were not alone? A. No, sir; my sister helped me and some people in the house. I had lots of people boarding in the house, and they could see what I put in the box.

Q. When you speak of these boxes for instance, and charge various amounts—I cannot remember them now—you did not rely upon your own memory exclusively? A. No.

Mr. LAMBERT: I reserve my cross examination.

Adjourned to meet on Saturday, the 20th inst., at 11 o'clock, a. m.

77 CATHERINE M. CORCORAN, recalled.

By Mr. DOWNING:

Q. Who, if anybody, advised you in regard to what disposition to be made of this fund? A. Why, nobody.

Q. Please state what, if anything, you had at the time you took this guardianship matter in hand in regard to the investment of money, or what knowledge you had about affairs at that time? A. I did not have any.

Q. How did you come to invest the \$2,000, if that is the amount, in that house? A. Why, Mr. Heenan had this house for sale, and he told me about it, and advised me to buy it.

Q. Who is Mr. Heenan? A. A real estate man in Georgetown.

Q. What did you do when he advised you to buy it? A. I went to Mr. Dolan and told him about it, and he advised me to buy it.

Q. What disposition did you make of the balance of the fund? A. I had it over in the Farmers' and Mechanics' bank, and somebody told me about its drawing interest and I took it out and put it in that bank.

Q. What, if anything, did your attorney or any of your friends say to you about the investment of the fund? A. Mr. Dolan—I asked him about it, and he told me it was proper to have it draw interest.

78 Q. That was after you told him? A. Yes, sir.

Q. And he gratified your desire to put it in the West End bank? A. Yes, sir.

Q. What have you paid on account of bonds in this case? A. \$80.

Q. Is that charged in the account? A. No, sir; that is not charged in the account.

Mr. DOWNING: We insist, Mr. Register, that that is a proper claim.

Mr. LAMBERT: That is objected to, on the ground that the court has already ruled that guardians acting in a fiduciary capacity have no right to be allowed the expenses in connection with the bond.

By Mr. DOWNING:

Q. What amounts have you paid for insurance for these children, which amounts are not in the account?

Mr. LAMBERT: I object to that.

(By Mr. DOWNING:)

Q. What is the amount? Have you paid any amounts in addition to what you have already stated to the court on account of the insurance for those children? A. Life insurance, do you mean?

Q. Yes? A. I have paid some; I do not know how much, because I have not kept an account of it.

Cross-examination.

By Mr. LAMBERT:

Q. Do you mean to say that the children never went by themselves down to school? A. Not that I remember—not by themselves; no.

79 Q. You stated that they never went down by themselves? A. I do not remember their going down there by themselves.

Q. You do not? A. No.

Q. You would not say that they have not gone by themselves? A. No. I would not want to tell a lie about it.

Q. Have they not frequently come up by themselves? A. No, sir—with the sister; and the last time with a girl older than themselves.

Q. Would you say that somebody always came up with them? A. Sister would, or I would go down to them.

Q. How would you know when they were coming up? A. The sister would write me and tell me that they were coming.

Q. Did you tell the sister to let them come alone? A. No, because the sister would not let them come by themselves. The sister would not let them travel by themselves.

Q. You always wrote down there? A. The sister always wrote and told me that she was going to send them up.

Q. And sometimes the sister would come up with them? A. Yes.

Q. You spoke of these children being extravagant. They were not any different from other children—they wanted everything they saw? A. They wanted everything they saw, just like other children; yes.

Q. You said you gave them everything they wanted? A. Yes—everything.

Q. You did not exercise any discretion at all—gave them
80 what they wanted? A. Yes.

Q. When they were little children? A. Yes, sir—and up to the present day.

Q. You gave them all the candy they wanted? A. Yes,—and soda water.

Q. And then you would pay doctors' bills too, whenever they needed? A. Yes. I was always worried about them being sick. I always sent for the doctors.

Q. You were not worried about their being sick when you gave them all the candy they wanted? A. I did not think that would make them sick.

Q. When your sister would take them around to places, you had to, of course, rely upon just what your sister told you as to what she spent; you did not know except in that way, what had been spent; did you? A. Why, certainly not. My sister never lied to me.

Q. Well, not to your knowledge. So that, the items that are made up from your sister's account are heresay, so far as you are concerned? A. Yes.

Q. When your sister would take the children around with her, would you understand that you paid your sister's expenses also? A. Yes; always did.

Q. So that, whenever either of you wanted to go any place, you paid your own way and charged it up? A. Yes, sir, and charged
it up.

81 Mr. BRANDENBURG: I do not think the witness understood that question.

The question and answer having been read to the witness.

The WITNESS: Whenever we wanted to. I did not understand that, that whenever they wanted to go, I took them or my sister took them.

By Mr. LAMBERT:

Q. Did you take them down the street unless they wanted to go? A. Not to cost car fare. Many times I would take them down town. I would ask them if they wanted to go.

Q. You asked them if they wanted to go? A. Yes.

Q. Did you not ask them if they wanted to go down to Norfolk? A. No, sir. Sister Catherine asked that.

Q. You did not ask them? A. No, sir.

Q. You made your arrangements, and did not ask them at all?
A. Yes, sir.

Q. And your sister went with you? A. Yes, sir.

Q. And some other lady went with you? A. Yes.

Q. And one of the sisters? A. There were three of the sisters.

Q. Did the sisters pay their own way? A. Yes.

Q. Did your sister pay her own way? A. My sister; yes.

Q. She paid for herself? A. Yes.

Q. And you charged for your expenses to the children's estate, did you? A. If I went myself I always charged it.

Q. I am speaking of the Norfolk trip? A. No. The children went; they wanted some one to go with them, and I charged it to their estate.

Q. Did you go on the Norfolk trip? A. No, sir; she went in my stead.

Q. So that, for the Norfolk trip you charged for the children? A. And my sister.

Q. And nobody else? A. No. The sisters paid their own expenses.

Q. When you speak of taking trips around to these nearby summer resorts, did you pay the expenses of your sister? A. My sister would not go.

Q. To any of them? A. No.

Q. Who would go? A. I would, with the children.

Q. You spoke of sending the children \$3 for masses to be said for their father. How many times did you send them \$3? A. I think about twice.

Q. You sent them \$3 each time? A. Yes.

Q. Why did you send so much? A. So that it would last them. They would have masses whenever they wanted to. I wish to correct that, and say that I sent \$3. once, \$2 another time, and at another time a dollar.

Q. Making \$3 in all? A. Yes.

Q. You read over the list that the children presented here of the things that they stated they had? A. Yes.

Q. Is that correct? A. Yes.

Q. Has that personal property been turned over to the children?
A. Yes, sir—I do not know. I turned it over to Mr. Downing, the jewelry, the furniture and such like.

Q. Where did you find this book that you speak of as having contained some of the entries? A. When we moved, my sister gathered up all the books, and she put them in a bag.

Q. You say that covers about a year? A. A little over a year, I guess.

Q. But you do not think the book has in it everything for that year?
A. No; I do not think it has.

Q. What was the matter with the children when you took them on this Atlantic City trip? A. Why, Marie had some breaking out

on her, and they said the salt water would do her good—some kind of—I do not know what you call it.

Q. Did you see anything the matter with the other one? A. No.

Q. And you were down to Atlantic City about ten days? A. Yes.

Q. What doctor advised you to go there? A. Dr. Crosson.

Q. You say you sent flowers to the convent on some occasions. How often did you send them down there? A. Three times.

Q. How much did you pay for them? A. \$3 each time.

Q. Making \$6 in all? A. Yes.

Q. You say that you would frequently ask the sisters to come up and stay with you? A. I did not say that I asked them. They came up a couple of times and stayed. When Sister Catherine wrote and said she was coming, I asked her to stay, of course.

84 Q. I understood you to say in reply to a question by the register that you invited them to come? A. When she would write that she was coming up, you know.

Q. You do not know how these other people and this man whom you spoke of came to the house? A. No; I do not, because this gentleman I did not know at all.

Q. They just came up and walked in with the children? A. No; the children were already at the house.

Q. They did not come with the children? A. No. This girl was a school companion of Marie's.

Q. Now, you say that you never had any advice at all in connection with how to manage this estate and what to do? A. No.

Q. When you were first appointed, you had Mr. Dolan for your attorney? A. Yes. But he did not tell me anything at all, only the money paid in that bank after I bought that house.

Q. How did you come to make your account in 1899? Who told you to do that? A. The court told me when I was first appointed.

Q. They did tell you to make an account? A. Yes—that first year.

Q. They did tell you that you did have to make an account? A. Yes—that first account.

Q. They never told you that you would have to keep any more accounts? A. I did not know I would have to keep any more.

85 Q. But you did keep an account that first year? A. I did not; my cousin kept it for me.

Q. Who fixed up that account for you? A. My cousin.

Q. Did you have a lawyer then? A. No; only when I brought it to Mr. Dolan, and he fixed it up.

Q. Nobody ever told you not to keep an account after that? A. Nobody ever told me to do it.

The REGISTER: You need not go into that. My mind is made up as to that. That is a common sense proposition.

Mr. LAMBERT: The witness said she never had anybody to advise her. (To the witness) Do you know Mr. Heenan? A. Yes, sir.

Q. Is he a relative of yours? A. Yes; he is my cousin.

Q. And you looked to him in connection with the management of the property; did you? A. In buying the house.

Q. And in collecting the rents, and all like that. He attended to all that; did he? A. Yes.

Q. How much did you have to pay life insurance on the life of these children? A. Ten cents a week each.

Q. And you say you have included everything in that account up to that time? A. Up to the time I made the statement?

Q. Yes? A. Yes.

Q. But you think you have paid something since? Oh, yes.

86 Q. In the Farmers' and Mechanics' bank, you appear to have had two accounts, one in your name as guardian, and one in your individual name? A. Yes.

Q. You had a personal account there; did you? A. Yes.

Q. And you appear to have drawn a check for all that personal account to Mr. Heenan? A. This money that I put in there was rents that I got after this first accounting that came here. It was \$180, and I put it in. I was not guardian any more, and I put in in my own name.

Mr. DOWNING: Counsel is not talking about the Farmers' and Mechanics' bank.

The WITNESS; The first time it was in the house that Mr. Heenan gave me. He told me to put it in that bank; so I put it in my own name. I was not appointed by the court then.

By Mr. LAMBERT:

Q. It was money belonging to the children, and you drew a check for it to Mr. Heenan? A. No; I do not remember drawing it to him.

Q. Do you not remember drawing a check on the bank to Mr. Heenan? A. No.

Q. What did you do with that money? A. When I drew it and put it in the West End bank, I drew it all out together. That is the way I did.

Q. You had two accounts in the Farmers' and Mechanics' bank; did you not? A. Yes.

87 Q. One in your own name as guardian, and one in your individual name? A. The first was in my own name.

Q. And you put in that account \$150. A. Yes.

Q. What did you do with that money? A. I left it in there until I drew it out to put in the West End bank.

Q. It appears by the records of the Farmers' and Mechanics' bank that you drew a check for that money, \$150 some dollars, to Mr. Heenan, and paid it to him. A. You had better ask Mr. Heenan.

Mr. BRANDENBURG: If you do not remember, just say so, and let your answer rest there.

Q. In the beginning, when you first got money in connection with

this estate—— A. I remember putting it in; but I do not remember any money given to Mr. Heenan. I do not remember it.

Q. You remember opening that account in the Farmers' and Mechanics' bank; do you not? A. Yes.

Q. One you opened as guardian? A. Yes.

Q. And one you opened as an individual? A. The first one was individual that I put in there.

Q. You do not remember the money that you put in the individual account. Is that it? A. I remember putting it in and leaving it there until I drew it all out together; but I do not remember drawing any check to Mr. Heenan.

By the REGISTER:

Q. As I understand you, the money which you first deposited was money found in the house and belonging to the father of
88 these children? A. Yes, sir.

By Mr. BRANDENBURG:

Q. Was this money that you refer to as having been deposited in your individual account, the money which you collected between the time of Mr. Corcoran's death and the time of your appointment as guardian? A. Yes, it was.

Q. In response to one of Mr. Lambert's questions, you stated that you did not exercise any discretion or judgment whatever on your own part when the children asked you for soda water, candies, luxuries or anything of that kind. Is that correct or not? A. Everything they asked me for I gave them.

Q. But you would not have given it to the children had you thought it would result in their injury; would you? A. Why, certainly not.

Q. Now, this money which you say you deposited in the savings bank. Did you first consult Mr. Dolan before you deposited the money or after you deposited it? A. Before I deposited it.

Q. Did you ask Mr. Dolan whether it would be proper for you to deposit the money in the savings bank? A. I did not ask him if it was proper. I told him that I was going to do it, and he said it would be proper.

Q. You stated in response to Mr. Lambert's question with reference to this insurance that the account which you have given covers everything that you expended. Did you mean that, or did
89 you merely mean that it covered all the money that was expended for insurance.

The WITNESS: Do you mean the children's life insurance?

Mr. BRANDENBURG: Yes.

The WITNESS: No; I have paid some since then that I have not an account for. I think you paid over there. I sent them to you.

Mr. LAMBERT: That is right.

The WITNESS: But I paid a good deal before that.

By Mr. BRANDENBURG :

Q. Did you mean to say that there were other items which you paid for, and which are not included in your accounts? A. Yes.

Q. Other items? A. Yes.

By Mr. LAMBERT :

Q. You have stated all the items you can remember that you have not put in your account? A. No; I remembered some since.

Q. But now you have stated? A. Yes; now. But I have thought of some since.

Q. Since you made your account? A. Yes.

Q. But you put them in your testimony? A. No. I told about the bond.

Q. But you stated about that? A. Yes.

Q. Now, you have put in all you have? A. Yes, sir; up to date.

90 CATHERINE M. CORCORAN recalled.

By Mr. DOWNING :

Q. Are those your signatures (handing witness eight checks, one of December 14, 1898, \$7.00, drawn on the National Safe Deposit Trust Company in favor of Mrs. Mary Dowling; one of April 29, 1899, for \$1,911 on the National Safe Deposit, Savings and Trust Company, in favor of Catherine Nolan; one of May 31, 1899 for \$73.24, on the National Safe Deposit, Savings and Trust Company, to E. G. Davis, collector; one of June 8, 1899, on the National Safe Deposit, Savings and Trust Company, for \$83.44, to E. G. Davis, collector; one of April 29, 1899, on the National Safe Deposit, Savings and Trust Company, for \$70 to John J. Dolan; one of October 26, 1899, on the National Safe Deposit, Savings and Trust Company, for \$3.69, to Louis Dent, register of wills; one of November 30, 1899, on the National Safe Deposit, Savings and Trust Company, for \$82.62, to E. G. Davis, and one of May 28, 1901, on the National Safe Deposit, Savings and Trust Company, for \$165.23, to John A. Heenan)? A. (After examining.) Yes.

Mr. DOWNING: I offer these checks in evidence.

The checks are herewith filed, marked Exhibit "C. M. C. No. —, respectively.

Mr. LAMBERT: What are those checks?

Mr. DOWNING: They are certain items. In each case they agree with the statement?

Mr. LAMBERT: All in the statement?

Mr. DOWNING: Yes. (To the witness:) What is that?
91 (Handing witness paper.) A. (After examining.) A certificate or voucher—dentist's receipt

Q. By whom? A. Dr. Hammett.

Mr. DOWNING: I offer that receipt in evidence.

The receipt is hereto attached, marked "Exhibit C. M. C. No. 9.

By Mr. DOWNING:

Q. For whom was that work done? A. It was for fixing the children's teeth—Irene Loretto.

Q. What is that? (Handing witness paper.) A. (After examining). Dressmaker's receipt, for the two children.

Q. Is that item included in your report submitted to the register?

A. I do not think it is; no.

Mr. DOWNING: I offer that paper in evidence.

The paper is herewith filed, marked "Exhibit C. M. C. No. —."

By Mr. DOWNING:

Q. Do those checks represent items in the account? A. Yes; I think they do.

Q. (Exhibiting book heretofore referred to in evidence). State what this book is? A. That is the first statement. When I made my first statement, I put the things down in that.

Q. This is the book that you spoke about some time ago as having been discovered by you? A. Yes.

Mr. LAMBERT: Do you want that book in evidence?

92 Mr. DOWNING: I understand the register wants it. I do not care anything about it.

By Mr. LAMBERT:

Q. I understand that this book represents the items which you kept in making up your first account? A. The second account.

Q. The first account was made in 1899; was it not? A. I guess so.

Q. The last entry I see in here is August, 1901.

Mr. DOWNING: Was the first account made in 1899?

Mr. LAMBERT: Yes.

The WITNESS: I do not think so.

The REGISTER: It was in 1898. (To the witness:) When did Mr. Corcoran die?

A. In 1897.

The REGISTER: Then it was in 1898. The administration began from 1898.

Mr. DOWNING: That cannot be correct, because this statement begins in 1898.

The REGISTER: That is right—the first statement was in 1898. Miss Corcoran's guardianship was co-existent with the administration.

Mr. LAMBERT: If I am not in error, the account was made up in 1899. I have it so in my notes. (To the witness:) Well, as an alter-

nate fact, this book does not show any items subsequently to August 1900; does it?

A. No.

Q. So that, you did not get from this book anything that you used for your account? A. On that other?

Q. Yes? A. I do not think so.

93 Mr. DOWNING: Mr. Lambert is talking about your last account; you understand. You had better understand the question. His question was that you did not get anything from this book that was included in your last statement.

Mr. LAMBERT: No; I did not say that; I said after August 1900. This book seems to end after August, 1900.

The WITNESS: I thought he was speaking about that other book.

Mr. DOWNING: That is correct. This book has not anything after August, 1900, that I know of.

Mr. LAMBERT: That is what I asked.

Mr. DOWNING: That is all right; yes.

By Mr. LAMBERT:

Q. So that, from August, 1900, you depended on your slips that you spoke of, your memory, and the memory of your sister? A. Yes.

By Mr. DOWNING:

Q. State whether or not there are any items in the account submitted to the register during the period of time covered by this book which are not in this book. Do you understand the question? You should understand it before you answer. You are asked if you have charged in your account which you submitted to the register items which you did not get from this book? A. No; I think that book is all right.

Q. The book is all right, so far as it goes? A. Yes. But do you mean that I put something on this paper from this book?

94 Q. What I want to get at is whether there are items in the statement submitted to the register which are not in this book? A. Yes.

By Mr. LAMBERT:

Q. Do you mean to say that there are items for the year 1899 that you did not put down in that book? A. For 1899? Yes; I think there are.

Q. Then you did not keep a book showing accurately everything that you expended? A. No. I——

Q. Do you know you did not? A. I know I did not. Everything that is there I put down in that book.

Q. Did you put down in that book everything as you spent it? A. Yes.

Q. So that, taking the month of December, say, 1899, you have

down here an item for dresses; one for ribbons; one for dresses again; one for Christmas box and freight and shoes. Was that all you spent in December? A. I think it was; yes.

Q. And so on as you spent the money each month, you put it down in this book? A. Yes.

Q. Covering the period for which you kept the book, and after that, you depended on your memory and that of your sister? A. Yes.

Q. But you kept everything else in this book? A. Yes.

By Mr. DOWNING:

Q. You stated in answer to my questions that there were items charged in the account submitted to the register during the period covered by this book that are not in this book? A. That I
95 put down in that book? Of course there are lots of things since then. Is that what you mean?

Q. Yes. A. Of course.

Q. For instance, take shoes, which is an item here some place or other, and another item for a dress. I think it was \$9. I do not remember the exact item. For illustration, take those items in this book and in the statement submitted to the register, you charged \$12. Can you explain that? A. No.

Q. You cannot explain that? A. No.

The REGISTER: You have not asked about these rents yet.

Mr. DOWNING: The witness says she cannot explain it.

The REGISTER: Permit me to ask her a question or two. (To the witness:) Can you tell me when you last collected rents from Donoghue? A. No; I cannot.

Q. You do not know about when? A. No.

Q. Does this book show all the rents that you have collected from Donoghue during the time this book was kept? A. I think it does.

By Mr. DOWNING:

Q. There are two items in that book of \$27 and something and \$28 and something received from Donoghue with which you charge yourself in that book as moneys received, but you do not charge yourself with them in the account which you first submitted to the register. Can you explain that? A. I guess I forgot to put it down.

By Mr. LAMBERT:

Q. You forgot to charge yourself with it when you made
96 up the account? A. Yes.

The REGISTER: Allow me to ask about it. (To the witness:) Did you find any money belonging to Mr. Corcoran—find it after he died, or collect any money in the business that belonged to him? A. No.

Q. Are you quite sure? I want you to try to remember that,

because we are now trying to trace a check. A. Which do you mean?

By Mr. DOWNING:

Q. Do you mean to say that there was no money at all in the house? A. I did not get the money, if it was there.

By the REGISTER:

Q. Was a business conducted there? A. Yes.

Q. Who got the receipts from that business after Mr. Corcoran's death and before Mr. Heenan was appointed administrator? A. I could not tell you.

Q. Who conducted the business? A. Mr. Corcoran himself.

Q. Who conducted the business after Mr. Corcoran died? A. Mr. Hughes. He bought the business out.

Q. I mean immediately after Mr. Corcoran's death. Who conducted the store then? A. They closed it up for pretty nearly a month. But I do not think there was any money there at all. I did not live there.

By Mr. LAMBERT:

Q. No money at all? A. No.

Q. None in the cash drawer? A. There were two or three men there.

By Mr. DOWNING:

Q. Where did you get the money which you deposited in the Farmers' and Mechanics' national bank before you were appointed guardian? A. I think that Mr. Heenan turned in the money to me, and I put it in that bank.

Q. Mr. Heenan turned it over to you? Where did he get it? A. When he was appointed administrator.

Mr. HEENAN: Mr. Downing speaks of the time before that.

The WITNESS: I did not get any money before then.

By Mr. DOWNING:

Q. You must have gotten money. Where did you get it? A. He gave it to me.

By the REGISTER:

Q. That money which you first deposited in the bank, was that your own money? A. No.

Q. Whose was it? A. Mr. Corcoran's.

Q. Where did you get it? A. Mr. Heenan gave it to me.

Q. Where did he get it? A. I do not know.

Mr. HEENAN: Let me refresh Miss Corcoran's memory. When Mr. Corcoran died, there was a clerk there.

The WITNESS: Yes; that is so.

Mr. HEENAN: When Mr. Corcoran died, the clerk turned the money over to me.

The WITNESS: Yes—and the watch at the same time.

By the REGISTER:

Q. What did you do with that money? A. Put it in the bank.

98 Q. And checked it out to Mr. Heenan? A. No; I waited until it got all together, and then put it in the bank.

Q. Do you recollect about how much that was? A. I think it was something over a hundred dollars; but I cannot tell you how much over, though. There was a clerk there, and I know that he turned over the money to me. That I know. I remember it, and a watch.

Q. Permit me to tell you the facts, and see if you can recollect about the money. Mr. Heenan, in his account as administrator, charged himself with \$183.19 which he says was cash on hand at the time Mr. Corcoran died? A. Yes.

Q. On the very day on which he charged himself with that money, September 16, 1898, you drew this check to Mr. Heenan for \$158.19? Do you know whether that was the same money or not? A. I could not tell you.

The REGISTER: The witness says that there was some money, and she put it in the bank and checked it over to Mr. Heenan.

99 Thereupon EDGAR P. BERRY was called in behalf of the present guardian, and testified among other things, that he is the cashier of the Farmers and Mechanics national bank, and that his records show that an account was opened by Katie M. Corcoran in October, 1897, and closed in December, 1898; that she also had a personal account, which was closed September 16, 1897, and that all checks by way of vouchers he presumes were returned to Miss Corcoran.

Thereupon to further sustain the contention of the present guardian W. D. HOOVER was called in his behalf, and testified that he is an officer of the National Safe and Deposit Company; that the transcript which he produced shows that Katie M. Corcoran had an account with this bank; that they had no other account with her than this one; that it was closed on the 18th day of July, 1902; that certain items in the copy of the guardian's account produced by the witness are for accrued interest month by month, as the bank allows interest. That the checks were returned to her or some one authorized to receive them in August 1902, could not say whether for the whole account. One of the clerks told me they had been delivered.

JOHN A. HEENAN was called as a witness on behalf of the present guardian, and among other things testified that he was appointed to take charge of the collection of the rents belonging to the wards from the time of Miss Corcoran's appointment; that the check he received from Miss Corcoran on the Farmers and Mechanics bank on September 16, 1897, for \$158.19, he does not recollect
100 what it was for, unless it was for taxes or something of that sort. Was not in the habit of getting checks from her, except in payment of taxes; that he has no recollection of the check, though it might have been in connection with the children; that he had no business relations with Miss Corcoran calling for the disbursement of money except as it was connected with the children or their estate; that he does not recollect of getting any money on account of his acting as administrator; that she paid something for church services, twenty-five dollars would probably cover that, which is the usual fee for solemn high mass.

The following appears in the minutes of the examination of this witness:

"It is agreed by counsel for the respective parties that Mr. Lambert is to produce a statement to be made by Mr. Donoghue from his books, which statement is not to be questioned as a true statement from his books. It is understood, however, that the right is reserved by parties on each side to call for the original books if the same should be deemed necessary."

The statement above referred to was not furnished by Mr. Lambert to the special auditor but was obtained by the special auditor himself and is claimed never to have been seen by either of the
parties.

101 The report of the register of wills who acted as special auditor upon said account was filed on May 28, 1903, and is as follows:

Supreme Court of District of Columbia, Holding a Probate Court.

In re Guardianship of MARIE J. CORCORAN *et al.* # 2259. Guardian.

Report of Register.

This matter was referred to me to state the accounts of the former guardian, Katie M. Corcoran.

Richard J. Corcoran died on the 27th of August, 1897, intestate, leaving as his heirs at law and next of kin, his two minor children, Marie J. Corcoran born about April 12, 1887 and Loretto T. Corcoran born in 1889; and one John A. Heenan, a cousin of the deceased, administered his estate in this court (administration # 7983).

On September 2, 1897, Katie M. Corcoran, a first cousin of the said minors, filed her petition in this case and was on the following

day appointed guardian, subsequently qualifying in the penalty of \$10,000.

On November 11, 1898, the first account of the said Katie M. Corcoran was passed and approved by this court showing a balance in her hands of \$4,877.29 cash and \$36.25 in chattels. In this account the guardian claimed and was allowed 10 % commission on the income, leaving \$4655.06 of principal upon which she did not take commission.

102 On April 10, 1899, the guardian filed a petition representing the income of the wards to be about \$80 per month and that she had about \$3000 *yet to be invested*; that the said wards were being educated at St. Mary's academy, Leonardtown, Maryland; and praying an allowance per month for the "education, clothing and maintenance" of said wards. Upon this petition an order was passed April 14, 1899, allowing the guardian "thirty dollars per month, for the *support and maintenance and education* of each of her wards." Claim has been made by counsel that the guardian is entitled to this as an absolute allowance, but I am of opinion that the order was intended to fix the amount of the income of the wards which was to be expended by the guardian for the purposes indicated. The guardian could not be allowed for board and education of the wards, and part of their clothing, all of which was furnished by St. Mary's academy, where the wards resided between 9 and 10 months of the year continuously and where they still reside.

At the same time, April 10, 1899, the guardian filed her petition, alleging that she had on deposit with the National Safe Deposit, Savings and Trust Company, about five thousand dollars; that she was "advised by counsel that it was (is) her duty to invest said funds for the benefit of her said wards;" and asking authority to purchase a piece of improved real estate in Georgetown, renting for about \$15 a month; and on this petition an order was passed

103 April 14, 1899, authorizing the guardian to make said purchase. The guardian subsequently reported said purchase, which was ratified by the court.

Nothing further was done by the guardian in this court until the past year. On July 3, 1902, petitions were filed by the minor above the age of 14 years and by both of the minors through their next friend, alleging that said infants had been in the care of St. Mary's academy continuously, they having been placed there by their father previous to his decease; that they had been furnished but a very small amount of money by their guardian in comparison to the estate to which they were entitled; that they had never been furnished a statement or accounting; that the guardian had failed to properly render her accounts; that it was not to the best interests of the children to have the guardian continued in her position for reasons which it was preferred should not to be disclosed unless the court should so direct. Upon these petitions a rule was issued to which answer was made expressing a willingness of the guardian to relinquish her ap-

pointment and account to the court. And after hearing, the court July 10, 1902, passed an order removing the guardian, directing her to account and appointing John W. Renahan guardian. Letters were accordingly issued to the new guardian July 25, 1902, he having qualified in the penalty of \$10,000.

On the 18th of September, 1902, the former guardian filed a rough statement of account, with vouchers and rent statements from the real estate agents—and thereafter on October 13th the order of reference to me was entered.

104 The account filed by the guardian was of such an unsatisfactory character that counsel confessed their inability to examine it with any degree of certainty or satisfaction and at their request, before proceeding with the reference, I made from it a digest or draft statement of account which was subsequently marked Exhibit L. A. D. # 1 and was the statement thereafter used in the reference. In making this statement I eliminated all duplicated items and separated the items vouched from those not vouched. This statement shows nett receipts of rents from the agents, after deducting commissions of agents and repairs, insurance and taxes paid by them, of \$2808.75; payment for which vouchers are furnished, including the purchase of the real estate, \$3754.15; credits claimed but not vouched for, \$1235.49.

Subsequently the guardian produced a book of account, which she claimed covered the early part of the period of her accounting, but an examination of it shows that it began in the year 1900, as evidenced by the first entry for which a voucher will be found elsewhere. This book is marked Exhibit C. M. C. # 11.

After a very careful and painstaking examination and checking off of the account and the various vouchers, and the book of account, submitted by the guardian, and the digest of the account prepared by myself, I am reluctantly compelled to the conclusion that it is impossible, with the data before me, to state an itemized account that will even approximate a correct or just one, beyond the items evidenced by vouchers. The account submitted by the guardian,

after the elimination of duplications and items for which
105 vouchers were furnished, claimed credit for over \$1200 in items not vouched. The wards are of too tender years to throw much, if any, light upon the transactions of their guardian and though counsel on both sides at one time considered the expediency of having them testify, it was evidently deemed inadvisable by them on account of the acute feeling which had been already engendered.

Being compelled, therefore, to rely upon the guardian for aid in arriving at an equitable and just statement of the account, I cannot in all fairness, believe that she has aided the court to the extent that she should have or could have. This conclusion is drawn almost wholly from her own testimony and the data submitted by her.

The account submitted by the guardian is fragmentary, full of duplications and double charges and bears on its face evidences of

alterations and increases in amounts that are open to criticism. The book of account was finally submitted only after my insistence that there must have been some material of the kind from which the account was prepared; and when submitted, bore upon its face evidences of mutilation entirely consistent with the testimony in the case. Sixteen pages are torn from the front and the few dates of the portion purporting to cover part of the period of the present accounting have been so changed and the items so interspersed and partially duplicated as to prevent my determining what the correct dates of the entries are for purposes of comparison.

Her testimony is uncertain, weak, fallacious, and in places flatly contradictory almost in the same breath, as the following résumé of facts from some of its more pertinent parts will show.

106 The guardian first alleged that her account of items not vouched was made up from her memory, then that she was assisted by the memory of her sister, a Mr. Ryan preparing the account.

On the witness stand three months later, she claimed to have lost this remarkable memory.

Later on she stated that at the time she prepared the account, she had receipts for some items and detailed memoranda for others, showing how all the items were expended.

Still later she admitted that all these memoranda were destroyed after her account was made up—burned them up when moving. (See especially pages 45-49 and 75 of Record.) Her sister, who was present at this time, but was not a witness, interjected into the hearing the statement, "I tore up everything" (page 45 of Record).

Eventually the guardian produced the book of account referred to.

Then she said that she had supplied in her account, from memory, what the book did not contain.

She afterwards admitted that she could not explain the difference between the book and her account.

She first stated that the book contained everything of credit for the period it was kept; then again claimed that it did not contain everything.

Taking as a special illustration the item of the trip to Atlantic City, she first said she could not give the details of the charge according to the memorandum which had been destroyed, then that the memorandum was mislaid, and then that she had the information *at home*.

The guardian, while admitting that she had kept her check stubs for her private account at the West End bank, stated that she had burned the checks and stubs for her guardianship accounts in the Farmers and Mechanics bank and the National Safe Deposit, Savings and Trust Company. Yet she afterwards produced as duplicate vouchers, checks on the latter company varying in date from December 1898 to May, 1901. The trust officer of the company certified that her account was closed July 18, 1902, and that some of the checks and (from their custom) probably all checks were delivered about the middle of August.

107 She states that she did not pay by check but drew money from the guardianship account in lump sums and used it. The transcript of account proven by the trust officer of the National Safe Deposit, Savings and Trust Company, and the checks above referred to as filed by the guardian, show items of credit paid by check.

Numbers of the items not vouched are for alleged purchases from professional and business men, from whom, no doubt, vouchers could be procured, even now, but with one or two exceptions the guardian has not produced any, though given ample opportunity to do so.

Upon disclosing in the testimony that her claims of credit for travelling expenses to and from Leonardtown were excessive, the guardian attempted to explain the difference by alleging that other things taken by her to the children were probably included in the charges.

The guardian alleged that the trip to Atlantic City was by advice of Dr. Crosson, but he was not produced to testify to that fact.

Although repairs to the real estate appear from the rent statements to have been invariably paid for by the agents, the guardian claims credit for three items to Hawkins, King and Ashby and one to the Capitol Hill agent, Donohoe. She alleges that she could not subsequently get receipts from the former three, and after first stating she paid the item to Donohoe; she admitted that it was probably deducted from his rent statement.

The guardian claims she was unfamiliar with business and was not advised to keep an account—or to invest the money, yet she regularly settled her first account (which she admits she was advised to do by the orphans' court) and subsequently attempted to keep a book of account or other evidences of payment in the shape of memoranda made at the time of the expenditure; and in her petition filed April 10, 1899, she swears that she was advised by counsel, it was her duty to invest the money which she then had—about \$5000 on deposit with the National Safe Deposit, Savings and Trust Company.

The above mentioned facts go to show clearly that the account of the guardian, her book of account, and her testimony, are entitled to little—if any credence—except in so far as they are supported by vouchers.

As to the general conduct of the guardian bearing on the
108 questions of commissions and her liability for interest, in addition to the facts of destruction or concealment of vouchers and papers, failure to procure vouchers and failure to keep or submit proper accounts, or to invest all of the fund, above recited, it is further shown by the admissions of the guardian that she did not even endeavor to get vouchers which she could have gotten; that though her own accounting shows over \$2700 should be in her hands, she admits she has no funds whatever, which she does not attempt to explain further than by claiming she spent it all on the

children; that she knew it was proper to invest the money of her wards as early as December, 1898, immediately after the settlement of her first account, when she placed it in the National Safe Deposit, Savings and Trust Co., in a savings bank check account at 2% on monthly balances. The guardian in this accounting also failed to charge herself with interest credited to her account by the National Safe Deposit, Savings and Trust Co., with proceeds of a Mutual Fire Insurance Co. policy surrendered and with rents of the Capitol Hill property received from Donohoe, some of which rents were disclosed by her book of account produced.

For the facts aforementioned, I refer especially to pages 2, 9-11, 13-16, 18-21, 23-26, 35-38, 42-49, 75, 95-'6, 115-'6 of the Record.

I am compelled to the conclusion, therefore, that this case combines all the essential elements and the marked particularities of a

109 case in which a guardian is chargeable with interest and not entitled to commissions. The most cogent reason impelling me to this conclusion, is that the fund was sufficiently large enough to have produced an income which, added to the rents of the realty, would have provided amply for these children, kept them in comfort, and left the principal intact at this date, instead of which the principal is, with the exception of the \$2000 invested in a house, entirely dissipated.

On the other hand it is, no doubt, a fact that this guardian has expended some of the funds for which she has not procured vouchers, though I am satisfied from the testimony they do not at all approach in amount any thing like the claim she makes.

I think a fair and equitable settlement of this case for both guardian and wards would be to allow the guardian all her vouched credits and the maximum commissions on the principal of her first account, the latter amounting to \$465.50, charging her with interest and disallowing commissions on this account and credits not vouched—and to allow the costs of this audit, outside of counsel fees for the wards, amounting to \$350, and court costs, out of the estate. This settlement approximately allows to the guardian two-thirds of the unvouched amounts claimed by her in her account as expended. I have stated the account on this basis in Schedule "A," except as to the fee for the audit which does not appear in the account.

The fairness of this settlement is, I think, demonstrated by the result of the account. According to the schedule of the account

110 herewith, at the time of the settlement of her last account, the guardian had sufficient funds to have invested 5000, producing \$25. per month. The nett rents of the real estate, after payment of taxes, insurance, repairs and agents' commissions, were about \$55 per month, making a total income of \$80 per month. Taking the period from August 31, 1898 to August 1, 1902, when this guardian ceased to collect rents, the total income on this basis would be \$3760, which added to the original \$5000 would make a total of \$8760. At the last above mentioned date, the balance shown against her by the account herewith is \$4260, to which we should

add the investment in the house, \$2000, making the total balance \$6260. Deducting from this \$6260 the cost of this audit or \$350 and court costs (say \$50) the amount left these wards would be \$5860. The guardian is therefore by this accounting allowed \$2900 of the income for 47 months or a little over \$60 per month; which I consider more than ample to have supported these young children in an even better manner than they have been.

The schedule referred to shows interest charged only on such sums as were in the guardian's hands after reserving a fair margin of cash for current needs; not on the full amounts. The interest is charged at semi-annual rests. She is given credit for every item for which vouchers were produced, except the small item of disbursements on Prudential Insurance policies on the lives of the wards. There was no necessity for this insurance, as the wards had ample estate to provide for their proper interment in case of decease, and it was not authorized by the court. I have also charged the guardian with the rents received from Donohoe, the data for which
 111 were procured from Donohoe's books by me; and with the amount received for the surrender of the Mutual Fire Insurance policy. Inasmuch as I have charged interest upon the fund, I have not charged the items of interest credited in the account of the National Safe Deposit, Savings and Trust Company. That was not a proper investment but a mere savings bank account, subject to check. Had the fund been properly invested, it might have been more intact today.

LOUIS A. DENT, *Register*.

March 31, 1903.

Fee, including stenographer, \$350.

112 Supreme Court of the District of Columbia, Holding a Probate Court.

SCHEDULE "A."

Catharine M. Corcoran, guardian, in account with Marie J. Corcoran and Loretto T. Corcoran.

Dr.

1898.			
Sept.	3.	To nett rents received from J. A. Heenan after the payment of 5% commissions and repairs, ins. and taxes....	\$57.33
"		To nett rents received from Donohoe.....	27.45
Oct.	2.	" " " " Heenan.....	57.33
Nov.	3.	" " " " " ".....	57.33
"	11.	To balance shown by first account.....	4,877.29
			<hr/>
			\$5,076.73

Cr.

1898.			
Oct.	3.	By freight to Leonardtown..... Vou. 1..	.75
"	24.	" Lansburgh & Bro. " 2..	6.32
Nov.	1.	" " " " " 3..	11.73
"	11.	" J. J. Dolan, att'y..... " 4..	20.00
"	11.	" commissions @ 10% on principal shown by first account \$4,655.06	465.51
			<hr/>
			504.31
Nov.	11.	To balance.....	4,572.42
Dec.	3.	" nett rents from Heenan.....	53.64

1899.
Jan. 5. To nett rents from Heenan..... \$55.44

113

1899.
Jan. 5. To nett rents from Donohoe..... 28.50
Feb. " " " " Heenan..... 55.44
M'ch. " " " " "..... 55.44

Amount carried forward..... \$4,820.88

Brought forward..... 4,820.88

1899.
Mc'h 19. To nett rents from Donohoe..... 24.00
Ap'l 7. " " " " Heenan..... 55.44

4,900.32

CR.

1898.
Nov. 30. By taxes..... Vou. 5.. 73.24
Dec. 9. " St. Mary's academy..... " 6.. 165.50
" 14. " check Mary Dowling..... " 7.. 7.00
" 16. " Mayer Bros..... " 8.. 3.58
" 26. " Mutual Insurance Co..... 11.65

1899.
Jan. " House of Good Shepherd..... " 9.. 5.00
Ap'l 3. " deposit on purchase house..... " 10.. 100.00
" 25. " Lansburgh..... " 11.. 9.28

375.25

" 25. To balance.... 4,525.07
" 26. To interest on \$4,500. from Nov. 11th to date—5½ months @ 6 %. 123.75
May To nett rents from Heenan..... 62.59
June 16. " " " " "..... 57.96
July 6. " " " " "..... 50.14
" 12. " " " " Donohoe..... 15.45
Aug. 10. " " " " Heenan..... 46.59

114

1899.
Sept. 7. To nett rents from Heenan..... 71.59
Oct. 2. " " " " "..... 71.09
" 19. " " " " Donohoe..... 7.55

5,031.78

CR.

1899.
Ap'l 29. By balance on purchase house..... Vou. 12.. 1,911.21
" " " J. J. Dolan, att'y & expenses..... " 13.. 70.00
May 4. " St. Mary's academy..... " 14.. 176.89

Amounts carried forward..... \$2,158.10 \$5,031.78

Brought forward..... 2,158.10 5,031.78

1899.
May 4. By Jordan, repairs..... Vou. 15.. 4.00
" 31. " taxes..... " 16.. 73.24
July 21. " Woodward & Lothrop..... " 17.. 2.50
Oct. 26. " register of wills..... " 18.. 3.69

2,241.53

" 26. To balance..... 2,790.25
" 26. To interest on \$2,750. from Ap'l 26—6 mos @ 6 %..... 82.50
Nov. 6. " nett rents from Heenan..... 69.69
Dec. 5. " " " " "..... 68.94

1900.					
Jan.	9.	To nett rents from Heenan.....			\$60.46
Feb.	6.	" " " " " ".....			69.69
M'ch	5.	" " " " " ".....			69.70
"	9.	" " " " " Donohoe... ..			8.55
Ap'l	5.	" " " " " Heenan.....			67.10
					<hr/>
					3,286.88

CR.

1899.					
Nov.	30.	By taxes.....	Vou. 19..	82.62	
Dec.	25.	" Mutual Insurance Co.....		10.63	
					<hr/>
					93.25

1900.					
Ap'l	5.	To balance			3,193.63

115

1900.					
Ap'l	26.	To interest on \$2,750. from Oct. 26—6 mos. @ 6 %.....			82.50
May	15.	" nett rents from Heenan			66.34
June	7.	" " " " " ".....			62.60
July	7.	" " " " " ".....			71.60
Aug.	15.	" " " " " ".....			36.35
Sept.	10.	" " " " " ".....			70.85
Oct.	10.	" " " " " ".....			64.40
					<hr/>
					3,648.27

CR.

June	9.	By Rich's, shoes.....	Vou. 20..	4.50	
"	11.	" taxes.....	" 21..	83.44	
					<hr/>
Amounts carried forward.....					\$87.94 \$3,648.27
Brought forward.....					87.94 3,648.27

1900.					
July		By Russell, dressmaker.....	Vou. 22..	2.50	
Sept.	1.	" Dr. Schooley	" 23..	6.00	
"		" St. Mary's academy.....	" 24..	334.82	
					<hr/>
					431.26

Oct.	10.	To balance.....			3,217.01
"	26.	To interest 6 mos. from Ap'l 26 on \$3,200.....			96.00
					<hr/>
					3,313.01

Nov.	7.	" nett rents from Heenan.....			69.70
Dec.	12.	" " " " " ".....			69.70

1901.					
Jan.	9.	" " " " " ".....			69.45
Feb.	11.	" " " " " ".....			58.05
M'ch	18.	" " " " " ".....			69.50
Ap'l	16.	" " " " " ".....			66.60
					<hr/>
					3,716.01

116

CR.

1900.					
Dec.	10.	By Kann & Sons.....	Vou. 25..	6.55	
"		" Bon Marche.....	" 26..	.53	
1901.					
M'ch	22.	" Burns—sodding lot.....	" 27..	8.00	
Ap'l	5.	" Palais Royal	" 28..	.25	
"	13.	" " " " " ".....	" 29..	.59	
"		" Bon Marche.....	" 30..	.75	

Ap'l 15.	To Palais Royal.....	Vou. 31..	\$0.50	
" 16.	" freight Leonardtown.....	" 32..	.25	
				17.42
" 16.	To balance			\$3,698.59
" 26.	To interest 6 mos. from Oct. 26 on \$3,300.....			99.00
				3,797.59
May 17.	To nett rents from Heenan			50.70
June 11.	" " " " "			68.60
July 9.	" " " " "			71.60
" 17.	" refund on Mutual Ins. policy			38.30
	Amount carried forward.....			\$4,026.79
	Brought forward.....			4,026.79
1901.				
Aug. 12.	To nett rents from Heenan.....			51.43
Sept. 19.	" " " " "			71.60
Oct. 14.	" " " " "			70.35
				4,220.17

Cr.

1901.				
May 2.	By St. Mary's academy	Vou. 33..	\$353.46	
" 22.	" Lansburgh	" 34..	2.86	
" " 31.	" Kann & Sons	" 35..	.76	
" 31.	" taxes	" 36..	165.53	
117				
1901.				
June 12.	By Heilbrun	Vou. 37..	3.50	
July " 5.	" Dr. Crosson.....	" 38..	30.00	
" 12.	" Mayer Bros.....	" 39..	1.92	
" " 12.	" Heilbrun.....	" 40..	2.75	
" " 12.	" Kann	" 41..	7.34	
Aug. " 24.	" Heilbrun	" 42..	1.48	
" 24.	" Palais Royal.....	" 43..	.60	
Sept. 26.	" freight Leonardtown.....	" 44..	.25	
				570.45
Oct. 14.	To balance			3,649.72
" 26.	To interest 6 mos. from Ap'l 26 on \$3,600 @ 6 %			108.00
				\$3,757.72
Nov. 12.	" nett rents from Heenan			54.45
1902.				
Jan. 21.	" " " " " (2 mos.).....			36.03
Feb. 13.	" " " " "			69.70
M'ch 18.	" " " " "			69.50
Ap'l 16.	" " " " "			68.10
				4,055.50

Cr.

1901.				
Dec.	By difference Mutual Ins. Co.....		1.01	
1902.				
Jan.	" Kann.....	Vou. 45..	1.25	
Ap'l	" freight Leonardtown.....	" 46..	.25	
	Amounts carried forward..		\$2.51	\$4,055.50

	Brought forward.....	2.51	4,055.50
1902.			
Ap'l	By Lansburgh.....	Vou. 47..	2.80
"	" Palais Royal.....	" 48..	.50
"	" Bon Marche.....	" 49..	.75
			<hr/> 6.56
" 26.	To balance		4,048.94
" "	To interest 6 mos. @ 6 % from Oct. 26 on \$3,700.....		111.00
			<hr/> 4,159.94
118			
June 25.	To nett rents from Heenan (2 mos.).....		56.14
July 25.	" " " " ".....		47.73
			<hr/> 4,263.81
	CR.		
July 1.	By Mayer Bros.....	Vou. 50..	1.00
"	" Lansburgh.....	" 51..	2.80
Nov. 18.	" hauling effects.....	" 52..	6.00
"	" Dr. Hammett.....	" 53..	17.00
"	" personal effects delivered to new guardian.....		36.25
			<hr/> 63.05
	To balance.....		4,200.76
	To interest on \$4,000 from Ap'l 26, 1902 to Oct. 26, 1902—6 mos.		
	@ 6%.....		120.00
			<hr/> 4,320.76
	To interest on balance from Oct. 26, 1902 to Ap'l 26, 1903—		
	6 mos. @ 6%.....		129.62
			<hr/> \$4,450.38

LOUIS A. DENT.

119 To this report the following exceptions were filed :

Now comes Katie M. Corcoran, former guardian of Marie J. and Loretta T. Corcoran, and to the report of the register of wills filed herein makes the following exceptions :

1. That the register erred in finding as a fact the statement on page 5 of his report wherein he states that the guardian has not aided the court to the extent she should have, or could have, and that such statement is based upon certain inconsistencies in her testimony, and that a certain book of account when submitted by her bore upon its face evidence of mutilation entirely inconsistent with the testimony in the case, and that her testimony is uncertain, weak and fallacious and in places flatly contradictory.

2. In charging the guardian for rents received by Donohoe for the reason that there was no evidence whatever introduced showing the receipt of said sums or of any sum whatever from said Donohoe, the register basing such finding upon *ex parte* examinations made by him of books not submitted to counsel for the guardian and without giving the guardian or her counsel an opportunity to cross-examine Donohoe.

3. In charging said guardian with interest on \$4,500.00 for the period between November 11, 1898, and April 26, 1899, being five

and one-half months at 6%, for the reason that said guardian had invested said sum by depositing the same in a trust company, for which she was receiving interest at the rate of 2% per annum on monthly balances.

120 4. In charging said guardian with interest on \$2750.00 for six months from April 26, 1899 to October 26, 1899 at 6% per annum, for the reason that the sum was invested as heretofore stated.

5. In charging said guardian with interest on \$2750.00 for the six months from October 26, 1899 to April 26, 1900, at 6% per annum for reasons before stated.

6. In charging said guardian with interest for the six months ending October 26, 1900, on the sum of \$3200.00 at the rate of 6% per annum, for reasons before stated.

7. In charging said guardian with interest for six months ending April 26, 1901 on the sum of \$3300.00 at the rate of 6% per annum, for reasons before stated.

8. In charging said guardian with interest for the six months ending October 26, 1901, on the sum of \$3600.00 at the rate of 6% per annum, for reasons before stated.

9. In charging said guardian with interest for the six months ending April 26, 1902, on the sum of \$3700.00 at the rate of 6% per annum, for the reasons before stated.

10. In charging the said guardian with interest for the six months ending October 26, 1902 on the sum of \$4,000.00, at the rate of 6% per annum, for the reasons before stated.

11. In charging the said guardian with interest on the sum of \$4,320.76 for the six months ending April 26, 1903, at the rate of 6% per annum, for the reasons before stated, and for the further reason that she cannot be charged with interest since the appointment of the new guardian.

121 12. In charging said guardian with any interest whatever upon the amount actually received by said guardian and invested by her in the National Safe Deposit Savings and Trust Company.

13. In charging the said guardian with compound interest on the funds in her hand for the period covered by said account, and in reckoning the same every six months.

14. In disallowing the sum of \$1,235.49 for credits claimed for which vouchers were not produced on the ground that counsel for said infants stipulated that said items should be allowed unless checked as having been objected to by him. (See Record page 83.)

15. In failing to allow to the accountant credit for the item, of \$165.23 paid as taxes for the year ending May 30, 1902.

16. In charging the guardian with credits claimed which were not vouched, since such credits were fully explained by the accountant.

17. In finding as a conclusion of law that said former guardian

was not entitled to commissions on so much of the account for which she furnished vouchers or furnished satisfactory explanations.

18. In finding as a matter of fact that said guardian was guilty of intentionally or wilfully making false statements in her said account, when as a matter of fact the evidence shows that she was ill and that time and again the hearings were postponed on doctor's certificates and that the discrepancies in her testimony were due largely to her condition of health, of mind and body.

122 19. In not allowing her for taxes for the year ending June 30, 1902."

After a hearing upon said exceptions, the court on January 4, 1904, delivered the following opinion :

In re Guardianship of MARIE J. CORCORAN et al.

On ex. to auditor's report.

No abnormal condition of either mind or body can exonerate a guardian from restoring to minors the assets of their estate: these assets are theirs: belong to them: there can be no exoneration save by restoration or by showing their expenditures for the advantage of the wards.

The obligation to either deliver or show a proper disbursement is a positive and affirmative duty; no requirement of either law or logic compels wards to point out that funds were *not* properly expended; the necessity of showing that they were so expended must be satisfied by the guardian.

The so-called account of Sept. 18 / 02 filed some two months subsequent to the removal of the guardian was prepared since then (R. 36), not from any legitimate book of account, but by joint conferences with a sister, and the neighbors (R. 41): this account is at best, no more than secondary evidence of what sisters and neighbors

123 may have said on those occasions; neither sister nor neighbor were called as witnesses, though the former was present during the progress of the hearing before the auditor this so-called account is not evidential matter, and can exercise no probative effect upon the point of its own correctness.

It was testified that a certain book, mis-called an "account book," supplied certain of the dates from which the account was in part framed; both these, the account and the book, show erasures, alterations, and increases, of such frequency as utterly to destroy any hope that either was prepared from any motive or purpose other than that which desperation lends to an effort falsely to cover up a mis-appropriation.

No document which bears upon its face the brand of alteration and mutilation by the hand which holds it forth, can be suffered *per se* to establish the validity of that which itself confounds.

My mind is willing to conclude that both the account and the

book are of no significance save to establish an attempt to blanket a shortage: neither should be accorded the lightest evidential force in favor of the former guardian.

Alleged items which are not vouched, are undertaken to be established in no way but by the indefinite, unsatisfactory, and unconvincing generalities of the former guardian, with no attempt to bring evidence from those persons to whom money is said to have been paid.

124 There is therefore no evidences which accounts for unvouched items.

The auditor said "it is no doubt a fact that this guardian has expended some of the funds for which she has not procured vouchers—I think a fair and equitable settlement would be &c., &c."

The duty of this guardian was "faithfully to account to the court": this she has in no wise done: it will in no manner do to say that she may have expended funds and guess at the amount of them: the court cannot take judicial notice of what might have been the price of this or that; and while it is not essential that she shall for each item present a voucher, yet it is necessary that she shall present such evidence of correctness and accuracy as will enable the court to look these infants in the face and tell them with some pretense of honesty that their estate has been accounted for; while it may be that money has been expended (other than will be allowed) yet the record presents no evidence which enables the court to say how much, what for, or in what sum: this is no case of "equities"; no condition of things can raise up equities to shield a guardian from affirmatively accounting for the estate of minor wards.

It is objected that the auditor charged the guardian with rents received from one Donohoe, the date- for which were procured from Donohoe's books in the absence of counsel, during the progress of the reference; there are as follows:

125	Sept. 1898.....	\$27.45	
	July 1899.....	28.50	
	May 1899.....	24.	
	July ".....	15.45	
	Oct. ".....	7.55	
	Mar. 1900.....	8.55	
		————	\$111.50

Of these items the first four aggregating \$95.40 are admitted by the guardian on pp. 17-18 of her book; the record shows, (p. 147)

"Mr Lambert is to produce a statement to be made by Mr. Donohoe from his books, which statement is not to be questioned as a true statement."

This statement was not produced by Mr. Lambert and the auditor went after it; it is not claimed that the difference—\$16.10, is erased, only that the auditor erred in going to the books instead of waiting

indefinitely for them to come to him ; the stipulation is express, that the original books might be produced (p. 147-8): this exception is overruled.

The 14th ex. concerns what is alleged to be a stipulation (R. 84) to the effect that unvouched items were to be allowed to the amount of \$1235.49: the statement of counsel for the infants (p. 84) refers only to the item mentioned, incidentals of a trip to Leonardtown, which together with the fare was said to be \$10.00 this item is allowed because of counsel's statement: otherwise the exceptions is overruled.

126 In view of the finding that the guardian has probably expended for the wards something not yet allowed, the finding of the auditor that she be allowed maximum commission upon her first accounting, is confirmed ; but for no other reason.

The case is free for the disallowance of any further commissions, and for the charging of interest; for interest would have been earned under a proper administration.

The semi-annual balances (exclusive of the auditor's interest charges) show, that while occasionally the balance fell below \$3000., yet had a \$3000. balance of Nov. 11th 1898 (schedule p. 1) been inserted as it should have been the accruing interest would have enabled the subsequent expenditures to have been made without encroachment upon a \$5000. invested principal: interest should be charged up on \$3000. from Nov. 11th 1898 to the date of the entry upon this opinion: in the absence of testimony showing difficulty in local investment at a lower percentage, that fixed by Code sec. # 1178 should be adopted ; the rate of interest will be 6%.

This audit has been occasioned by the dereliction of the guardian : I see no reason why the wards should pay for it; the costs of it, together with the court costs, occasioned by it will be taxed against the former guardian.

The exceptions to the report, except as that report is herein modified, are overruled ; an entry may be prepared in accordance with this memorandum.

WRIGHT.

127 On March 31, 1904, the court entered the following order :

" This cause coming on to be heard upon the pleadings, testimony and report of special auditor, stating the account of the former guardian, and the exceptions filed thereto, it is, by the court, this 31st day of March, A. D., 1904,

Adjudged, ordered and decreed that the said exceptions be, and the same are hereby overruled and the account of the special auditor be, and the same is hereby confirmed save only as to the former guardian's claim of allowance of ten dollars (\$10.00) for a trip to Leonardtown, as stated in the fourteenth exception, which allowance is hereby made, and as to the calculation of interest in said account at semi-annual rests.

It is further adjudged and decreed that the said Katie M. Corcoran,

the former guardian, after the allowance of said ten dollars, and after eliminating from said account of the special auditor, the calculations of interest at semi-annual rests, is indebted to the said infants, Marie J. Corcoran and Loretta T. Corcoran, in the principal sum of three thousand four hundred and eighty-eight and one-hundredth (\$3438.01) dollars: and that the said Kate M. Corcoran, former guardian, is further indebted to the said infants Marie J. Corcoran and Loretta T. Corcoran in the sum of nine hundred and seventy (\$970) dollars being interest on principal sum of three thousand dollars (\$3000) from November 11, A. D. 1898 to date of this decree at the rate of six per cent. per annum; and that said Kate M. Corcoran, former guardian, is indebted to the said infants Marie J. Corcoran and Loretta T. Corcoran in the further sum of three hundred and fifty (\$350) dollars for fees and costs of the special auditor.

And it is further ordered and decreed that the said Kate M. Corcoran, former guardian, forthwith pay to John W. Renehan, present guardian of said infants, the said sums of principal interest, fees and costs amounting to the sum of four thousand eight hundred and eight and one hundredth (\$4808.01) dollars; and also pay the fees of the register of wills in the sum of eighteen and ninety-five hundredths (\$18.95) dollars.

And the said John W. Renehan, present guardian of said infants, shall have and is hereby given judgment against said Kate M. Corcoran, former guardian, for the sum of three hundred and fifty (\$350) dollars, fees and costs of the special auditor and the said sum of eighteen and ninety-five hundredths (\$18.95) dollars fees of the register of wills.

Upon the signing of this order on March 31, 1904, exceptions were noted and an appeal was taken therefrom in open court.

On April 20, 1904, the appeal bond was filed and approved.

On May 12, 1904, the time was extended thirty days for filing record in the Court of Appeals, which time was again extended on June 15th, 1904, to August 1, 1904; and on July 27, 1904, the time was again extended to September 15, 1904.

It is hereby stipulated and agreed that the foregoing is the record on the appeal.

LAMBERT & BAKER,

Attorneys for Guardian.

BRANDENBURG & BRANDENBURG,

ROSSA F. DOWNING,

Attorneys for Katharine M. Corcoran.

129 No. 2259

Order No. 2084

Order for Copy.

Estate of the Orphans of RICHARD J. CORCORAN, Deceased.

Please furnish transcript for Court of Appeals (see papers attached).
Ordered by Brandenburg & Brandenburg.

130

Form No. 94.

Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit* :

I, James Tanner, register of wills for the District of Columbia, clerk of the probate court, do hereby certify the foregoing pages, numbered from 1 to 129, inclusive, to be true copies of the originals of certain papers on file in the office of the register of wills, clerk of the probate court, in case No. 2259 Estate of Marie J. Corcoran and Loretta T. Corcoran, minors, wherein Katherine M. Corcoran is appellant, and John W. Renahan, guardian is appellee, the same constituting a true, and correct transcript of record of certain proceedings had in said cause according to the written request of Messrs. Brandenburg & Brandenburg of counsel filed therein and made a part hereof.

I further certify, that the bond for appeal, in the penalty of one hundred (\$100) dollars, was duly filed by said appellants, and approved by said court on the 20th day of April, A. D. 1904.

In testimony whereof, I hereunto subscribe
Seal Supreme Court my name and affix the seal of the said probate court, this 13th day of August, A. D. 1904.
of the District of Columbia, Probate 1904.

Jurisdiction.

JAMES TANNER,
*Register of Wills for the District of Columbia,
Clerk of Probate Court.*

Endorsed on cover: District of Columbia supreme court. No. 1467. Katherine M. Corcoran, appellant, vs. John W. Renahan, guardian. Court of Appeals, District of Columbia. Filed Sep. 10, 1904. Henry W. Hodges, clerk.

COURT OF APPEALS,
DISTRICT OF COLUMBIA.
FILED

NOV 1 1904

Henry W. Rodgers
L. L. L.

IN THE

Court of Appeals of the District of Columbia.

KATHERINE M. CORCORAN,

Appellant,

v.

JOHN W. RENEHAN,

Guardian.

No. 1467—

16 Special.

Brief for Appellant.

CLARENCE A. BRANDENBURG,

EDWIN C. BRANDENBURG,

F. WALTER BRANDENBURG,

Attorneys for Appellant.

ROSSA F. DOWNING,

Of Counsel.

IN THE

Court of Appeals of the District of Columbia

KATHERINE M. CORCORAN, *Appellant*,
v.
JOHN W. RENEHAN, *Guardian*.
} No. 1467—
} 16, Special.

Statement of Facts and Brief for Appellant.

On September 3, 1897, Katie M. Corcoran, the appellant, was appointed guardian of Marie J. Corcoran, born April 12, 1887, and Loretto T. Corcoran, born in 1889, minor children of Richard J. Corcoran, who died August 27, 1897.

In due course, on November 11, 1898, the first account of said guardian was approved by the court below, holding an Orphans' Court, which showed a balance in her hands of \$4,877.29 cash, and \$36.25 in chattels. In this account the guardian claimed and was allowed 10 per cent commission on the income, leaving a principal sum of \$4,655.06 upon which she neither claimed nor was allowed any commission.

On April 10, 1899, upon petition filed by the guardian, the Orphans' Court passed an order allowing the guardian the sum of \$30 per month for each of said wards, for their support, maintenance and education.

On April 14, 1899, the guardian was authorized to purchase a piece of real estate for the sum of \$2,000. This investment was duly made and the real estate is now the property of the children.

Nothing further seems to have been done in the court

until July 10, 1902, when, on petition of the minors, both of whom were at the time above the age of fourteen years, the appellant was removed as guardian, and the appellee was appointed guardian in her stead.

On October 13, 1902, the account of the appellant was referred to the then Register of Wills to be stated. Such proceedings were had under this reference that, thereafter, on May 28, 1903, the special auditor filed his report (R. p. 54 *et seq.*) accompanied by the account as stated by him, wherein he allowed the appellant credit in her account for only such items as were supported by vouchers, and refused to allow credit for any items, without regard to their nature or the fact that they were actually expended for necessities for the minors, because they were not vouched. In this report the special auditor failed to allow the guardian credit for taxes on her wards' real estate, amounting to \$165.23, for the year ending June 30, 1902, although actually paid, because the voucher was not produced. He also visited the office of certain real estate brokers, in the absence of and without notice to counsel, and from the books of such brokers determined that the guardian had received \$111.50, with which she had not charged herself, and charged her accordingly.

In the judgment of the special auditor "this case combines all the essential elements [whatever they may be] and the marked peculiarities [whatever those are] of a case in which a guardian is chargeable with interest and not entitled to commission," and he therefore proceeded to charge the appellant with compound interest. The net result was, he found the appellant indebted to the estate in the sum of \$4,450.38, besides a fee of \$350 to the special auditor.

Various exceptions to this account were filed on behalf of the appellant (R. pp. 64, 65, 66), to which reference is respectfully made, the principal ones relating to the *ex*

parte investigation of the books of the real estate broker upon which the special auditor based a charge against the appellant; to the compounding of interest; to the charging of any interest whatever; to the disallowance of the items aggregating \$1,235.49, because not vouched; to the failure to allow the sum of \$165.23 taxes paid by the appellant, and to the disallowance of commissions.

A hearing was duly had upon these exceptions, and the court below overruled said exceptions except so far as they related to interest, and one small item of \$10, and passed an order (R. pp. 68, 69) directing the appellant to pay \$3,438.01 principal, \$970 interest, \$350 fees and costs of special auditor, the fees of the Register of Wills; and for the two last mentioned items rendered judgment against the appellant.

From the finding of the special auditor and the judgment of the court below approving the account stated by such auditor, modified as stated, this appeal is prosecuted.

Assignment of Errors.

The court below erred:

1. In passing the order appealed from, approving the report of the special auditor, except as modified in said order.

2. In refusing to allow the appellant credit for the sum of \$1,235.49, as claimed, because such items were not vouched.

3. In refusing to allow credit for the sum of \$165.23, paid as taxes on the real estate of the minors, for the year ending June 30, 1902, because not vouched.

4. In charging the appellant with the sum of \$111.50, the amount determined by an *ex parte* investigation of the special auditor.

5. In refusing to allow the appellant commissions upon her receipts since the date of her first account.

6. In charging the appellant with full interest upon the sum of \$3,000, from November 11, 1898, as set forth in the order appealed from, together with \$350 costs and fees.

7. In charging her with the payment of \$4,808.01.

BRIEF.

The situation presented by this record reveals the unfortunate results that not infrequently attend the appointment of relatives as guardians for minor children and administrators of estates, merely because of such relationship, without inquiry into, and often without regard to, the mental fitness and business capacity of such relative; not infrequently with the idea of its unimportance so long as a solvent surety appears upon the bond. The mental and physical condition of the appellant appears from the record. Now, when called to account, she is without any funds whatever, and she swears that the whole estate, outside of the real estate, has been expended by her for her former wards. No one pretends that she has appropriated the funds to her own use. No one can justly accuse her of cupidity or fraudulent conduct. She is a weak, sick woman, who, like many others, presumed the estate was unlimited, and whose aim was to gratify every wish and whim of her wards. Her counsel died not long after the settlement of her first account, and, as is not infrequently believed, she thought after the settlement of her first account, that no further account was required of her. These facts are not recited in extenuation or justification of the failure of the appellant to do her full duty as required by law; but a proper appreciation of them will lead to a just appraisal of her conduct, and the proper method of dealing with her account. No regard whatever seems to have been paid to these facts by either the special auditor or the court below, and gross injustice has resulted.

The special auditor says (p. 57), "Her testimony is

uncertain, weak, fallacious, and in places flatly contradictory *almost in the same breath.*" In places, that is quite true; but so obviously true, so palpably true, and yet so remarkable, as in itself to suggest the mental and physical condition of the appellant, and to acquit her of cupidity and fraudulent conduct.

No matter how difficult, it was the duty of the special auditor and the court below to go over the account of the appellant, item by item, and arrive at a just determination; and yet we have the remarkable situation in which the special auditor says (R. p. 56), "I am reluctantly compelled to the conclusion that it is impossible, with the data before me, to state an itemized account that will *even approximate a correct or just one*, beyond the items evidenced by vouchers." The account stated by him, therefore, and approved by the court, in the language of the special auditor, is not even *approximately* correct or just. Are we not then justified in saying, this situation is remarkable? And will this court affirm a judgment approving an account that is not even approximately correct or just? We certainly believe it will not.

We shall now proceed to a demonstration of the inaccuracy and unjustness of the account as stated by the special auditor, apparent upon the account itself, by a specific consideration of the errors assigned.

Items Not Vouched.

These items aggregate \$1,235.49. They were rejected solely because they were not accompanied by vouchers, without any consideration of the justice of any of the items, without any finding that the items were not proper items, and without any finding that the guardian had not in fact expended the several sums for which she claimed credit. Is that the rule of law? Is it just? We admit it was an easy way. If only items vouched were to be

considered, and these items because vouched, without regard to nature, were to be allowed, there was no occasion for a reference to a special auditor, at an expense of \$350, when the same service is rendered daily by the clerks in the Register's office, at nominal expense.

It is the rarest thing to find any guardian with vouchers on hand for all disbursements. Many items, particularly trivial items for which cash is paid, are frequently included in accounts of guardians and administrators, and approved merely on the oath to the account that the amounts were actually expended as claimed, or that vouchers were obtained and lost, and yet in this case the most rigid rule was enforced, and not a single cent has been allowed for which no vouchers were produced. Such a rule, enforced in all cases, might tend to promote justice, but it would be an innovation and would be calculated to startle persons doing business in the Orphans' Court.

In this case, dozens of items for obvious necessities, not vouched, were rejected, while others of identically the same nature were allowed because vouched. Is that the iron-bound rule of law? We do not know that any different rule of accounting is to be applied in this case from the rule applied in other cases. In this case, the accountant swears she actually paid out the various sums in the statement of items not vouched, and, in many instances, with ample detail. In no particular is her statement in this regard contradicted, and, as hereafter shown, in most instances, the items were not even questioned by counsel for the present guardian. Among the items rejected, were those for board of the children during the months when they were not at school, at the rate of \$30 per month for both children, including laundry of clothing. An analysis of the account as stated and approved, shows a remarkable situation, and shows, with marked emphasis, the injustice of the order appealed from.

Referring, therefore, to the account as stated by the special auditor, we find, by adding every credit, that he has allowed the sum of \$132.89 only for wearing apparel and medical attention (not a single cent for amusement, toys, recreation and the like) for the care of two girls, between twelve and fourteen years of age, during a period of 3 years 10 months and 20 days covered by the account! Just think of it! During about 47 months, for two children, he has allowed \$132.89, or about \$1.33 per month for each! And note that this sum of \$132.89 includes \$53 for doctor's bills. If we deduct the amount paid for medical attention, we have an allowance of \$79.89 for clothing for 2 children for 47 months—children about twelve or fourteen years of age, or an allowance of about 80 cents a month for each! Is there anything further necessary to demonstrate the absurdity of the situation?

Again referring to the account, we find there has been allowed during this period, the sum of \$147.47 for miscellaneous items, comprising freight, insurance, hauling, sodding of grave, and repairs to real estate. Included in this item of \$147.47 is \$90 paid John J. Dolan, attorney, thus leaving for miscellaneous things during 47 months only the sum of \$57.47. The only other credits allowed (not including payments for real estate purchased) are two, \$478.07 paid for taxes, though in fact she paid \$165.23 more (not vouched and therefore not credited) and \$1,030.67 paid St. Mary's Academy. Now, adding every credit allowed by the special auditor, we have the following:

Clothing and medical attention	\$132 89
Miscellaneous, including \$90 paid attorney	147 47
Taxes	478 07
Schooling	1,030 67
<hr/>	
Total	\$1,789 10

That is to say, the *total allowance* made for 47 months, *including taxes*, is \$1,789.10, and deducting taxes paid, \$478.07, leaves an actual allowance, including \$90 paid attorney, costs paid Register of Wills and doctor's bills, of \$1,311.03, which, divided by 47, the number of months covered by the report, gives exactly \$27.88 per month for two large children, including tuition, or \$13.94 for each, while the court allowed \$30 per month for each! Now, these are figures taken from the approved account, and are absolutely correct and may be verified by a few minutes' calculation.

But the special auditor, unmindful of his own account, which gave the *exact* situation, indulged in this speculation (R. p. 59): "The guardian is therefore by this accounting allowed \$2,900 of the income for 47 months, or a little over \$60 per month." But that is not true. If he allowed that amount, surely he means he allowed it in his account. But he did not. We have added every item of credit contained in the account, and, as above given, he has allowed only \$27.88 per month for the two children. Is anything more needed to show the injustice of the account? If anything is needed in addition to the oath of the appellant that she spent *all* the money for the children, if anything more is needed to demonstrate the injustice of disallowing the items not vouched, it is not found in the corroborative circumstance that two doll-babies could scarcely be decently clothed for 47 months for \$57.47.

Little circumstances, appearing upon the face of the approved account, further enforce the justice of the rejected items and the injustice of the account stated. There is no allowance for clothing, car-fare, amusements, etc., between April 25, 1899, and June, 1900, a period of 14 months, except \$2.50 paid Woodward & Lothrop. There are many other periods nearly as long without allowance,

yet, if we refer to the account of the appellant as submitted on page 5 of the record, we find during these periods the appellant bought for the children dresses, hats, medicines, paid doctor's bills, etc. It is not denied that the children were boarded and housed during each year, from early in June till late in September, when not at school. The auditor makes no allowance whatever for this. The reasonable charge of \$15 per month for this service for each child, aggregating \$300, was rejected absolutely, because not vouched. The appellant swears she paid these amounts or rendered this service and her statement is not contradicted. But, it is said she has no vouchers. Yet the appellant says most of the items were cash purchases for which she received no receipts, and that what receipts she had she burned or destroyed when she moved. While she swears time and again that *all* the money was used for the children, even the allowance of the items claimed, not vouched, would still leave a shortage which her bondsman must meet. And in this connection it may not be improper to say the real appellant is a solvent bondsman, who, on ascertainment of the just amount due, will respond to the obligation.

We wish to demonstrate further the wholly speculative nature of the report of the special auditor, who, without such intent, has done the appellant an injustice.

On page 59 of the record, in his report, the special auditor says:

"According to the schedule of the account herewith, at the time of the settlement of her last account the guardian had sufficient funds to have invested \$5,000, producing \$25 per month. The net rents of the real estate, after payment of taxes, insurance, repairs and agents' commissions, were about \$55 per month, making a total of \$80 per month. Taking the period from August 31, 1898, to August 1, 1902,

when this guardian ceased to collect rents, the total income on this basis would be \$3,760, which added to the original \$5,000 would make a total of \$8,760. At the last above mentioned date, the balance shown against her by the account herewith is \$4,260, to which we should add the investment in the house, \$2,000, making the total balance \$6,260. Deducting from this \$6,260 the cost of this auditor, \$350, and court costs, the amount left these wards would be \$5,860. The guardian is therefore by this accounting allowed \$2,900 of the income for 47 months or a little over \$60 a month."

It will be noted, in arriving at this conclusion, he uses as a basis the sum of \$4,260, claimed to be on hand on August 1, 1902, as shown by the account stated by him. But this amount includes compound interest for nearly four years, which the court below considered an error. This alone destroys the value of the statement.

It will further be noted, in order to arrive at his estimate of an income of \$80 per month, he assumes there was \$5,000 available for investment at 6 per cent per annum, and that the real estate yielded \$55 per month. Both are wrong. It is easy to be exact and wholly unnecessary to speculate. The guardian had on hand at her last account \$4,655.06 (R. p. 55, line 7; p. 60, 4th line from bottom). Deducting commissions allowed, left exactly \$4,189.55. Then why say \$5,000? But of this amount the appellant invested, early in 1897, \$2,081.21 in the purchase of the house in Georgetown, thus leaving \$2,108.34. And the income of \$55 per month from real estate which he mentions was the income from the real estate *after the investment of the \$2,000*. He, therefore, besides assuming she had more than she in fact had, computes interest on the whole, including the \$2,000, and adds to it the income on the real estate, including that purchased with the \$2,000, thus making a double charge.

But he is in error again in assuming the real estate yielded \$55 per month, although he had the exact figures before him. If we add every item of rent received, as shown by the approved account, we find it amounts to exactly \$2,885.20. Deducting taxes paid and allowed, \$478.07, and taxes for year ending June 30, 1902, amounting to \$165.23, leaves exactly \$2,241.60, which divided by 48, the number of months (being one more than 47, because paid in advance and covering August, 1902), gives exactly \$46.70 per month net income from the real estate. The result is, there *must have been* an invasion of the principal, and yet the decree gives the children now more than they had at the beginning, commissions being deducted as was done by the special auditor.

Interest.

The special auditor allowed compound interest. This was modified by the court and \$970 allowed as interest on \$3,000, from November 11, 1898, to the date of the decree.

The court (page 68, opinion) follows the special auditor in the error of assuming that on November 1, 1898, the guardian had for investment \$5,000, upon which there need have been no encroachment, and accordingly allows interest on \$3,000 supposed to remain after the investment of \$2,000 in real estate. But we have shown this to be an error. On November 1, 1898 (see approved account, p. 60), the guardian had on hand exactly \$4,655.06, less commissions allowed (*id.*) of \$465.51, leaving \$4,184.55, and of this amount she paid \$2,011.21 for real estate and \$70 expenses in connection therewith, leaving exactly \$2,103.34 and not \$3,000. (The item of \$4,877.29 mentioned in the account was the amount before deducting commissions on the income allowed by the court. After deducting commissions on the income there remained, November, 1898, \$4,655.06. (See Aud.

Rep. p. 55, 7th line, and account, p. 60, 4th line from bottom.) We do not understand why speculation should be indulged in when the actual figures are present. We have also shown, on the basis of an allowance of \$60 per month (though actually more was expended) as found by the court, the income was not sufficient and there was of necessity a gradual encroachment on the principal. In this situation the whole of the \$2,103.34 could not have been invested. Certainly not more than \$2,000 could have been, and we therefore contend the court erred in allowing interest on \$3,000.

We claim however there should not have been allowed more than two per cent interest on \$2,000. There was no order directing the investment of this \$2,000. Even this was an uncertain amount liable to be reduced by the needs of the children. There are hundreds of estates settled in the District in which larger amounts are shown uninvested and upon which no interest is thought of being charged. But somehow or other, this incompetent and weak woman is held to the most rigid requirements. But, in this case, before his death, the attorney of the appellant advised her to deposit the amount she had at the National Safe Deposit Co., which she did, and while there, there was allowed her interest at the rate of 2 per cent. We contend this is the limit of the charge that should be made against her, and that only on \$2,000.

Taxes.

The special auditor has allowed the following taxes paid :

Nov. 30, 1898, for $\frac{1}{2}$ year 1898-99	\$73 24
May 31, 1899 " " " " "	73 24
Nov. 30, 1899 " " " 1899-00	82 62
June 11, 1900 " " " " "	83 44
May 31, 1901, for year ending June 30, 1901 . . .	165 53
Total	<hr/> \$478 07

But during the period of appellant's guardianship, taxes for the year ending June 30, 1902, became due, amounting to \$165.23, and she paid them. She claimed allowance for this amount, but, not being supported by voucher, the amount was not allowed. The fact is, the taxes were paid. That is not questioned, and no one else pretends to have paid them. Is it not a refinement of justice that denied the appellant credit for this amount?

Rents Received from Donahoe.

The special auditor says in his report (p. 60): "I have also charged the guardian with the rents received from Donahoe, the *data for which were procured from Donahoe's books by me.*" On the strength of this information obtained "by me," he charged the appellant with items amounting to \$111.50. To this exception was taken, but overruled, the court saying four of the items were "admitted by the guardian on pp. 17-18 of her book." This is the *only instance* in which any credit whatever is given to the account produced by the appellant. The court says there was an express stipulation that the "books might be produced," and that the auditor merely went after the books instead of waiting for the books to come to him (pp. 67, 68). But the court is certainly in error. The stipulation is on page 54 of the record and is as follows:

"It is agreed by counsel for the respective parties that Mr. Lambert is to produce a statement to be made *by Mr. Donahoe* from his books, which statement is not to be questioned as a *true statement from his books.* It is understood, however, that the right is reserved by parties on each side to call for the original books if the same should be deemed necessary."

Now, this stipulation did not authorize the special auditor to go after the books and make a statement

himself. Counsel never saw it, and they never agreed that when produced the items shown by it would be admitted. The admission extended only to the accuracy of the copy *prepared by Mr. Donahoe*. Zeal is commendable—sometimes; but zeal of this character in a judicial proceeding scarcely meets the requirements of law. We do not know if it is correct or not. We object to the charge made on the strength of this *ex-parte* and unauthorized act of the special auditor.

***Many of the Items Disallowed were not
Excepted to.***

When the guardian was called to account she filed the best data she could, from which the special auditor prepared the tabulated statement found on pages 2 to 9 of the record, which was taken as the basis for the accounting. Thereupon, the accountant made oath as to its justness. Thereupon, the attorney for the appellee excepted to certain items. Instead of a formal exception he marked with numbers in front of the items excepted to. These appear on the account referred to. (See R. pp. 5–9.) Assuming the mode of accounting would therefore be as in other cases, the attention of counsel for appellant was addressed to the items excepted to. And yet no one of the items not excepted to has been allowed. While we do not claim that the acts of guardians or counsel can waive the rights of infants, they can do so to a certain extent, and when items were obvious necessities, supported by oath, and not excepted to, we claim we had a right to their allowance. This view was called to the attention of the court below, but misapprehended. The court in its opinion, p. 68 of the record, says:

“The 14th exception concerns what is alleged to be a stipulation to the effect that unvouched items were to be allowed to the amount of \$1,235.49; the

statement of counsel for the infants refers only to the items mentioned, incidentals of a trip to Leonardtown, which together with the fare was said to be \$10. This item is allowed because of counsel's statement, otherwise the exception is overruled."

In the first place, our claim was merely that so many of the items, not vouched, aggregating \$1,235.49, as *were not excepted to*, should be allowed, and such of the others as the testimony established. In the next place, the understanding to which the court refers, concerning the trip to Leonardtown, is not the understanding to which we referred and upon which we relied. The matter the court refers to is found on the middle of page 31 of the record. What we referred to is a different matter entirely and is found at the bottom of page 30 and the first two lines on page 31, and is as follows:

"MR. DOWNING: Mr. Lambert, these items before which you have figures, are those the ones you question?"

"MR. LAMBERT: We except to all those we have figures before.

"MR. DOWNING: Do you except to the balance?"

"MR. LAMBERT: *Not unless they have figures before them.*"

Now, most of the unvouched items were not excepted to and we tried to show the court that fact, but the court referred to the wrong colloquy of counsel and fell in error.

Our claim is, we were entitled to the allowance of items, supported by oath, and not excepted to, though not vouched, and to such of the items excepted to as were established by the evidence.

Most of the unvouched items were not excepted to. Most of the items excepted to were satisfactorily established by evidence. For instance, what ground can possibly exist for the rejection of the reasonable claim of

\$15 per month, for each child, aggregating \$300, for board, lodging, washing, etc., when not at school during the long summer vacations? It is not claimed the charge was unreasonable. It is not denied the children were cared for. Is this very moderate allowance to be denied because the service was rendered by the guardian herself? And if not, and her claim is supported by oath, is that item to be rejected solely because the appellant did not give herself a receipt? It is a *reductio ad absurdum*. The law makes no such requirement. Section 1131 of the Code requires a guardian to give bond conditioned to "faithfully account," not "in every instance, furnish a voucher."

Section 1135 of the Code provides the guardian "*shall* be allowed credit * * for expenses"; not merely for such expenses as are evidenced by vouchers. The same section also provides "the court shall determine the amounts to be annually expended in the maintenance and education of the infant." This allowance was made at the rate of \$30 per month for each child, because *the court considered that at least that amount would be necessary for the purpose*. The special auditor (though mistaken, as we have demonstrated) thought he was allowing that amount. The appellant swears she spent more than that amount. We have therefore a case in which the court and parties considered an expenditure of \$60 per month as necessary; we have evidence that more than that amount was expended, and we therefore claim the law requires that the appellant shall have credit for at least the monthly allowance even though the items making up the total expenditure are not all supported by vouchers. We believe one of the objects of the law in fixing an amount for monthly disbursement was to relieve the guardian of the necessity of taking vouchers for every little expenditure incident to the care of children.

In this case it seems an account was regularly kept at

first: then she keep some vouchers: then an imperfect book account, and later neither account nor vouchers. And yet it can not be denied that the infants received the same care and required the same clothing during the period for which the guardian kept neither account nor vouchers, as during the period for which both account and vouchers were kept. This does not prove, as the special auditor assumed, that during one period disbursements were made and none during the other. It simply demonstrates the carelessness or rather incompetency of the guardian in performing her duty for the reasons heretofore suggested. This fact was forced upon the special auditor as appears from his statement (R. p. 59) that "it is, *no doubt*, a fact that this guardian has expended some of the funds for which she has not procured vouchers." And yet he makes no such allowance.

Our claim is we were entitled to the allowance of items supported by oath, not vouched, but not excepted to, and to such of the items excepted to as were established by the evidence, not less than \$60 per month.

The special auditor charged \$350 for his costs and fees in preparing this report, or a little over 10 per cent on the principal sum of \$3,438.01 for which the court held the appellant liable by the decree. We presume we must yield to the sentiment that such fees should not be questioned. But we do deny the propriety of charging the appellant with that amount, under the circumstances of this case, and rendering a formal *judgment* therefor.

Commissions.

No commissions were allowed on the receipts by the guardian during the period of 47 months covered by this account. We submit, if she is to be charged with every item of receipt, denied allowance for more than half of her disbursement, and then charged interest on an

amount in excess of the amount actually in hand, justice would seem to require the allowance of commissions. We therefore claim the court erred in refusing such allowance.

Conclusion.

We have shown that on November 3, 1898, the guardian had on hand the principal sum of \$4,655.06 (Account, p. 55, line 7, and p. 60, 4th line from bottom), less \$465.51, commissions allowed, or \$4,189.55. Deducting from this the \$2,081.21, cost and expenses of real estate purchased, leaves a principal sum on hand then of \$2,108.34. We have shown that the monthly rentals accurately computed averaged \$46.70 per month. There was no other source of income. Assuming the appellant were however charged 6 per cent interest per annum on the principal sum of \$2,108.34 as if she had invested it, would add annually to the income \$126.48 or \$10.54 per month, and make a total monthly income from all sources of \$57.24. *This is less than the amount the appellant was allowed monthly for the support of the children.* It is apparent however that the actual expenditures were in excess of \$60 and actually invaded the principal. We therefore suggest, as fair and equitable and as tending more nearly to justice, that the income, including interest on the principal sum stated, be treated as offset by the allowance of \$60 per month made by the court. This would leave the appellant liable for the principal sum of \$2,108.34, upon which interest has already been computed and which should therefore be reduced by an allowance of commissions on the income during the period covered by the account. This amount, though considerable and a total loss, will be promptly met by the surety.

As the special auditor says (R. p. 56), it was impossible for him, with the data before him, to state an account that

would "*even approximate a correct or just one.*" Whatever the reason, we admit he did not. Indeed, we have demonstrated he did not. For this reason we ask a reversal. If reversed, and a further accounting is considered necessary, and as the special auditor is no longer Register of Wills, in the interest of economy, we hope a reference will be ordered before the regular auditor of the court.

Respectfully submitted.

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ROSSA F. DOWNING,
of Counsel.

No. 1467.
Special Calendar No. 16

KATHERINE M. CORCORAN, APPEL

vs.

JOHN W. RENEHAN, GUARDIAN

BRIEF FOR APPELLEE.

WILTON J. LAMBERT,
D. W. BAKER,

Attorneys for Appellee

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

No. 1467.
Special Calendar No. 16.

KATHERINE M. CORCORAN, APPELLANT,

vs.

JOHN W. RENEHAN, GUARDIAN.

Statement of Case.

This is an appeal from a decree of the Supreme Court of the District of Columbia holding a probate court; said decree was entered on March 31, 1904, and adjudged Katherine M. Corcoran, the appellant, to be indebted to certain infants in the sum of \$3,488.01, together with the sum of \$970, interest on principal sum of \$3,000, from November 11, 1898, to the date of this decree, at the rate of six per centum per annum, and \$350 dollars for fees and costs of the special auditor. The decree further orders her to pay this sum and the costs due the register of wills, and judgment is awarded in favor of the appellee for all the costs due. This decree was passed by the court upon pleadings, testimony, and report of special auditor, all of which was founded upon a petition filed by the infants, Marie J. and Loretta T. Corcoran against the appellant, requiring her to show cause why she should not account for the moneys that had come into her hand by virtue of her guardianship of the said infants, she having been appointed guardian by a decree of said court on the 3d day of September, 1897. Upon the coming in of her answer the court, on July 10,

1902, removed the appellant and appointed John W. Renahan, the appellee, guardian in her stead, and ordered the appellant to render an account on or before August 10, 1902. Thereafter the account of appellant was referred to the register of wills as special auditor for the purpose of being properly stated, and the record contains only so much of the account which contains the items for which no vouchers were produced. Testimony was taken before the special auditor, and on March 31, 1903, he filed his report (Rec. p. 54).

To this report were filed nineteen exceptions, and after a hearing upon said exceptions the court, on March 31, 1904, entered the decree heretofore referred to, and an appeal was noted to this court from said decree and the case is now here for hearing.

ARGUMENT.

From the decree and the option of the court it would appear that exceptions 3 to 13, both inclusive, were sustained by the court, and that instead thereof the court charged interest on the sum of \$3,000 from November 11, 1898. The court found as a fact from all the testimony that it was just and right that the defaulting guardian should pay this interest. The court record, page 68, says:

"The semi-annual balances (exclusive of auditor's interest charges) show that while occasionally the balance fell below \$3,000, yet had a \$3,000 balance of November 11, 1898 (schedule, p. 1) been inserted, as it should have been, the accruing interest would have enabled the subsequent expenditures to have been made without encroachment upon a \$5,000 invested principal; interest should be charged upon \$3,000 from November 11, 1898, to the date of the entry upon this opinion; in the absence of testimony showing difficulty in local investment at a lower percentage than that fixed by the Code, section No. 1178, should be adopted; the rate of interest will be 6 per cent."

Eliminating these exceptions, the points attempted to be raised on this record are:

1. Whether or not the defaulting guardian should pay the interest required to be paid by the decree.

2. Whether or not the special auditor had a right to charge the guardian for rents received by Donohoe,

3. Whether or not the court erred in disallowing the sum of \$1,235.49 for credits claimed, for which vouchers were not produced.

4. Whether or not the court erred in failing to allow to the defaulting guardian credit for \$165.23, alleged to be paid as taxes for the year ending May 30, 1902.

5. Whether or not the court erred in finding as a conclusion of law from the facts before him that the guardian was not entitled to commissions,

6. Whether or not the court erred in not allowing the defaulting guardian for taxes alleged to have been paid for the year ending June 30, 1902.

While the points here enumerated are attempted to be raised on this appeal, the only question really before this court is whether or not, as matter of law, the court erred in entering the decree that it did, and we insist that the only questions that are properly before this court are:

1. Whether or not the court erred when it decreed that the guardian should receive no commissions on the last account filed and also that she should be charged with interest, as ordered in that decree, on money not really invested by her.

2. Whether or not the special auditor, as matter of law, was correct in charging the guardian for the rents received by Donohoe.

3. Whether or not the special auditor was, as matter of law, correct in disallowing the sum of \$1,235.49 for credits claimed for which no vouchers were produced and in disallowing the credit of \$165.23, alleged to have been paid for taxes for the year ending May 30, 1902, and for disallowing taxes for the year ending June 30, 1902.

It will be seen at first glance that the three propositions here referred to embraced not only, in the first instance, questions of law but also questions of fact, but it is insisted that these propositions, as they are to be considered by this court, involve only the questions of law that may arise on this record. As far as the facts themselves are concerned, they were determined by the special auditor who had before him the whole case and not merely the record that is now here before the court. He examined the vouchers filed, the mutilated account books presented, he heard the testimony of the defaulting guardian, saw her manner when before him, and, from all evidence taken before him he, in his report, finds certain facts, which facts are affirmed by the justice holding the probate court, and it is well settled by this court that the finding of a special auditor is to be treated in the nature of the verdict of a jury and that his finding will not be set aside unless it is not supported or warranted by anything that takes place before him or unless it is bad in law.

Speaking of this question the Court of Appeals, in the case of *Grafton vs. Paine*, 7 App. D. C. 266, say :

“ We do not think it is incumbent upon us to enter into the consideration of the question of fact thus raised as though we were sitting as a jury ; we think we should be governed by the rule stated in the case of *Richardson vs. VanAuken*, 5 App. D. C. 209, wherein it was said by the Chief Justice, speaking for the court: ‘ The findings of a master or an auditor concurred in by the court below are to be taken as presumptively correct and will be permitted to stand unless some obvious error has intervened in the application of the law or the principles of the decree under which he acts, or some important mistake has been made in the evidence and which has been clearly pointed out and made manifest. This rule has been repeatedly affirmed by the Supreme Court of the United States and is one of general application

in the equity practice, both in the Federal and State courts of this country."

See, also—

Tilghman vs. Proctor, 125 U. S. 136.

Evans vs. State Bank, 144 U. S. 107.

Crawford vs. Neal, 144 U. S. 585.

Furrer vs. Ferris, 145 U. S. 132.

Smith vs. American, etc., Trust Co., 12 App. D. C. 192.

The report of the special auditor in this cause fully explains the manner in which he has stated the account, and he says:

"After a very careful and painstaking examination and checking off of the account and the various vouchers and the book of account submitted by the guardian and the digest of the account prepared by myself, I am reluctantly compelled to the conclusion that it is impossible, with the data before me, to state an itemized account that will even approximate a correct or just one beyond the items evidenced by the vouchers."

Again he says:

"Being compelled, therefore, to rely upon the guardian for aid in arriving at an equitable and just statement of the account, I can not in all fairness, believe that she has aided the court to the extent that she should have or could have. This conclusion is drawn almost wholly from her own testimony and the data submitted by her.

"The account submitted by the guardian is fragmentary, full of duplications and double charges and bears on its face evidences of alterations and increases in amounts that are open to criticism. The book of account was finally submitted only after my insistence that there must have been some material of the kind from which the account was prepared; and when submitted, bore upon its face evidences of

mutilation entirely consistent with the testimony in the case. Sixteen pages are torn from the front and the few dates of the portion purporting to cover part of the period of the present accounting have been so changed and the items so interspersed and partially duplicated as to prevent my determining what the correct dates of the entries are for purposes of comparison.

"Her testimony is uncertain, weak, fallacious, and in places flatly contradictory almost in the same breath, as the following resume of facts from some of its more pertinent parts will show.

"The guardian first alleged that her account of items not vouched for was made up from her memory, then that she was assisted by the memory of her sister, a Mr. Ryan preparing the account.

"On the witness stand three months later, she claimed to have lost this remarkable memory.

"Later on she stated that at the time she prepared the account, she had receipts for some items and detailed memoranda for others, showing how all the items were expended.

"Still later she admitted that all these memoranda were destroyed after her account was made up—burned them up when moving (see especially pages 45-49 and 75 of record). Her sister, who was present at this time, but was not a witness, interjected into the hearing the statement, 'I tore up everything, (page 45 of record).

"Eventually the guardian produced the book of account referred to.

"Then she said that she had supplied in her account, from memory, what the book did not contain.

"She afterwards admitted that she could not explain the difference between the book and her account."

Again he says:

"As to the general conduct of the guardian bearing on the questions of commissions and her liability for interest, in addition to the facts of destruction or concealment of vouchers and papers, failure to

procure vouchers and failure to keep or submit proper accounts, or to invest all of the fund, above recited, it is further shown by the admissions of the guardian that she did not even endeavor to get vouchers which she could have gotten; that though her own accounting shows over \$2,700 should be in her hands, she admits she has no funds whatever, which she does not attempt to explain further than by claiming she spent it all on the children; that she knew it was proper to invest the money of her wards as early as December, 1898, immediately after the settlement of her first account, when she placed it in the National Safe Deposit Savings and Trust Co., in a savings bank check account at 2 per cent on monthly balances. The guardian in this accounting also failed to charge herself with interest credited to her account by the National Safe Deposit Savings and Trust Co., with proceeds of a Mutual Fire Insurance Co., policy surrendered, and with rents of the Capitol Hill property received from Donohoe, some of which rents were disclosed by her book of account produced.

"For the facts aforementioned, I refer especially to pages 2, 9-11, 13-16, 18-21, 23-26, 35-38, 42-49, 75, 95-96, 115-116 of the record.

"I am compelled to the conclusion, therefore, that this case combines all the essential elements and the marked particularities of a case in which a guardian is chargeable with interest and not entitled to commissions. The most cogent reason impelling me to this conclusion, is that the fund was sufficiently large enough to have produced an income which, added to the rents of the reality, would have provided amply for these children, kept them in comfort, and left the principal intact at this date, instead of which the principal is, with the exception of the \$2,000 invested in a house, entirely dissipated."

The justice presiding in the Probate Court, after hearing argument upon the exceptions, referring to the conduct of the guardian, says:

"It was testified that a certain book, miscalle and

'account book,' supplied certain of the dates from which the account was in part framed; both these, the account and the book, show erasures, alterations, and increases, of such frequency as utterly to destroy any hope that either was prepared from any motive or purpose other than that which desperation lends to an effort falsely to cover up a misappropriation.

"No document which bears upon its face the brand of alteration and mutilation by the hand which holds it forth, can be suffered *per se* to establish the validity of that which itself confounds.

"My mind is willing to conclude that both the account and the book are of no significance save to establish an attempt to blanket a shortage; neither should be accorded the lightest evidential force in favor of the former guardian.

"Alleged items which are not vouched, are undertaken to be established in no way but by the indefinite, unsatisfactory, and unconvincing generalities of the former guardian, with no attempt to bring evidence from those persons to whom money is said to have been paid.

"There is therefore no evidence which accounts for unvouched items.

"The auditor said: 'It is no doubt a fact that this guardian has expended some of the funds for she has not procured vouchers—I think a fair and equitable settlement would be,' etc., etc.

"The duty of this guardian was 'faithfully to account to the court;' this she has in no wise done; it will in no manner do to say that she may have expended funds and guess at the amount of them; the court can not take judicial notice of what might have been the price of this or that; and while it is not essential that she shall for each item present a voucher, yet it is necessary that she shall present such evidence of correctness and accuracy as will enable the court to look these infants in the face and tell them with some pretence of honesty that their estate has been accounted for; while it may be that money has been expended (other than will be allowed), yet the record presents no evidence that en-

ables the court to say how much, what for, or in what sum; this is no case of 'equities;' no condition of things can raise up equities to shield a guardian from affirmatively accounting for the estate of minor wards."

So that we have here the finding of the special auditor and the decision of the court determining the action of this defaulting guardian; and furthermore we have the testimony of the guardian herself as it appears in the record; and we insist that a comparison of the record, with the finding of facts by the special auditor and with the opinion of the court shows fully that the auditor and the court arrived at a proper conclusion, and that there is nothing in the record which would warrant this court in disturbing either the facts as found or the conclusions of law arising from those facts, which conclusions of law warrant the decree entered by the probate court.

We will consider, therefore, propositions of law in their order:

1. Whether or not the court erred when it decreed that the guardian should receive no commissions on the last account filed and should also pay interest as ordered in that decree on money not really invested by the guardian.

On the question of charging of interest on money not invested and refusal of commissions to a defaulting guardian, the law is well settled. Where money should have been invested and the guardian is derelict and fails to make that investment, interest should be charged.

Interest can be charged against the appellant in this cause upon the ground that she failed to make the investments; that she used the money as her own, or that she failed to make a proper account, and authorities are numerous to justify a charge of interest upon any one of these grounds.

Appeal of Baker et. al., 8 Serg. & Rawl. 12.

Appeal of Godfrey Fisher, 175 Pa. 411.

In re Jacob Dissenger, 39 N. J. Eq. 227.

State vs. Richardson, 29 Mo. App. 596.

Steyer vs. Morris, 20 Ill. App. 392.

Crump et al. vs. Gerock, 40 Miss. 765.

Winslow vs. The People, 117 Ill. 153.

Heirs of Bradford vs. Bodfish, 39 Iowa, 681.

Guardianship of Cardwell, 55 Calif. 137.

Fay vs. Howell, 1 Pick. 527.

Hescht vs. Calvert, 32 W. Va. 215.

The fact that part of the time certain of the money belonging to these infants was drawing 2 per cent in a safe deposit company can in no way affect the decree, for that was not a proper investment, and the appellant is given proper allowance therefor in her account.

On the question of refusal of commissions, it is insisted that it would be folly to contend that the appellant, who according to her own showing in her own padded account was more than \$2,700 behind, would be allowed commissions. Commissions are given as a reward for the faithful performance of the trust and not for the purpose of rewarding a defaulting guardian, for it is well settled that where a guardian does not properly perform his trust he is not entitled to commissions, and where he keeps no account and makes no report of his trust, or defaults in his account, no commission will be allowed.

State vs. Richardson, 29 Mo. App. 595.

In re Kopp's estate, 2 N. Y. Supp. 495.

Lambs' App., 58 Pa. St. 142.

State vs. Windley et al., 99 N. C. 4.

Reed et al. vs. R yburn, 23 Ark. 47.

Again the question of whether or not a guardion should receive commissions is one that is within the sound discretion of the probate court and hardly matter to be decided on appeal.

It is, therefore, submitted that there was no error committed by the probate court when this appellant was refused commissions and compelled to pay interest on money not invested by her.

2. Whether or not the special auditor as matter of law was correct in charging the guardian for the rents received by Donohoe.

An examination of the record (p. 54) will show that there was a stipulation by counsel in regard to this statement. It was agreed that Mr. Lambert was to produce a statement to be made by Mr. Donohoe, from his books, and it was also understood that each party reserved the right to call for the original if the same should be necessary. The statement referred to was not furnished by Mr. Lambert, but was obtained by the special auditor himself, and the record says "and is claimed never to have been seen by either of the parties." The statement itself is not set out in the record as part of the evidence, but on page 67 of the record the court refers to the statement, as follows:

"It is objected that the auditor charged the guardian with rents received from one Donohoe, the dates for which were procured from Donohoe's books in the absence of counsel, during the progress of the reference, there are as follows:

"Sept. 1898.....	\$27.45
July, 1899.....	28.50
May, 1899.....	24.00
July, ".....	15.45
Oct., ".....	7.55
Mar., 1900.....	8.55

\$111.50

"Of these items the first four aggregating \$95.40 are admitted by the guardian on pp. 17-18 of her book; the record shows (p. 147):

"'Mr. Lambert is to produce a statement to be made by Mr. Donohoe from his books, which statement is not to be questioned as a true statement.'

"This statement was not produced by Mr. Lambert and the auditor went after it; it is not claimed that the difference—16.10, is erased, only that the auditor erred in going to the books instead of waiting indefinitely for them to come to him; the stipulation is express, that the original books might be produced (Rec. pp. 147-8); this exception is overruled."

It nowhere appears in the record that the appellant is injured by this statement, and it would appear from the decision of the court that all but \$16.10, being the last two items in said statement, were accounted for by the appellant herself. It certainly was the duty of counsel for the appellant to show to the special auditor, or the court below, how they were injured by the statement, or to have asked the special auditor to have permitted the original books to be produced; not having done so, their objection certainly comes with bad grace from them.

3. Whether or not the special auditor was, as matter of law, correct in disallowing the sum of \$1,235.49 for credits claimed for which no vouchers were produced and in disallowing the credit of \$165.23 alleged to have been paid for taxes for the year ending May 30, 1902, and for disallowing taxes for the year ending June 30, 1902.

Here, again, we have really merely a matter of fact involved, which matter of fact was fully decided by the special auditor, and his decision thereon affirmed by the probate court. It is insisted that there is no evidence in this case that would warrant the allowance of any of the sums here mentioned; just why appellant claims a double allowance for apparently the same tax year appellee is unable to understand, but the record will show, as far as the question of taxes for the year here mentioned is concerned, no payment on the part of the appellant, and, therefore, she certainly should not be allowed credit in her account therefor. In regard to the disallowance of the unvouched credits the

special auditor found, as matter of fact, no testimony to support these claims, and the court affirmed that finding. For it is well settled that the burden is upon the guardian to prove any credits claimed.

Hutton *vs.* Williams, 60 Ala. 138.

May *vs.* Drake, 61 Ala. 53.

Appellant's counsel virtually admits this fact, and in their exception to the disallowance of this amount they base their ground of exception upon a pretended stipulation of counsel for appellee. In their fourth exception, they say :

“In disallowing the sum of \$1,235.49, for credits claimed for which vouchers were not produced, on the ground that counsel for said infants stipulated that said items should be allowed unless checked as having been objected to by him.”

Before examining the record to determine whether or not such a stipulation exists therein, it is contended that no one had a right to make any such stipulation, the appellee is an officer of the court, and the accounting, which the appellant was making, was not to him but to the court, and counsel for the appellee had no power to bind the infants to any stipulation that they might have made, for they derive their authority merely from the appellee, and the appellee could not, if he had desired, stipulated in regard to the settling of this account. The record shows that the appellant was cited not to account to the appellee but to render an account in the cause, and an examination of the testimony of the appellant will show that her counsel examined her as to nearly all of the unvouched items, even to the incidentals which, on page 31, were not excepted to.

But it is submitted to the court that an examination of the record will show that counsel made no stipulation with the appellant but merely questioned certain particular items, leaving it, of course, for the appellant to properly

state such an account as would be passed by the court. On page 30 of the record the following colloquy took place between counsel :

Mr. Downing: Mr. Lambert, these items before which you have figures, are these the ones you question ?

Mr. Lambert: We except to all those that we have figures before.

Mr. Downing: Do you except to the balance ?

Mr. Lambert: Not unless they have figures before them.

And further on, on page 31:

Mr. Downing: I think it is agreed between Mr. Lambert and myself that the items for incidentals are not excepted to.

Mr. Brandenburg: That is very good; that saves us a good deal of trouble.

Mr. Lambert: That is very good; there are only two or three of them.

The court who heard the exceptions treated the conversation here narrated as referring only to the items of incidentals and allowed the sum of \$10 because of counsel's statement. The appellant, however, contends that by reason of this conversation the court was bound to allow for all unvouched items except those before which a number appears, upon the theory that counsel could, by not excepting thereto, give away property that belonged to the infants. It is respectfully submitted that it was for the special auditor of the court to determine what items should be allowed, and that the casual conversations that took place between counsel should not affect the decision of the court. Counsel might have in good faith questioned only certain of the items, and when he found from that questioning that the paper filed could not, under any circumstances, be treated as a proper account objected to the whole. The examination in this case of the guardian, both direct

and cross, shows conclusively that the unvouched statement filed was merely a cloak to hide, if possible, her defalcation, and such is the finding on the part of the special auditor and the court, and such finding is fully warranted by the testimony taken before the special auditor.

Where an account is presented without being accompanied by proper vouchers the court is justified in disallowing every claim for credit.

In re Caris estate, 14 Phila., 265.

How, then, can appellant, on account of the conversation in the record, say that merely because she was not questioned on these items by appellee's counsel, that she should be allowed therefor? It is insisted that such is not the law and that the special auditor had a right to find as he did, and that the probate court had a right to affirm the auditor as it did.

So far as the awarding of costs is concerned, that was determined by the probate court, and its determination is not reviewable in this court.

It is therefore respectfully submitted that there is no error in the record and that the decree should be affirmed.

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Attorneys for Appellee.